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A P P E A R A N C E S:

FOR PLAINTIFF
APPLE:

MORRISON & FOERSTER
BY: HAROLD J. MCELHINNY
RACHEL KREVANS
425 MARKET STREET
SAN FRANCISCO, CALIFORNIA 94105

WILMER, CUTLER, PICKERING,
HALE AND DORR
BY: WILLIAM F. LEE
60 STATE STREET
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BY: MARK D. SELWYN
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PALO ALTO, CALIFORNIA 94304

FOR SAMSUNG:

QUINN, EMANUEL, URQUHART & SULLIVAN
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WILLIAM PRICE
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LOS ANGELES, CALIFORNIA 90017

BY: VICTORIA F. MAROULIS
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1 SAN JOSE, CALIFORNIA

APRIL 29, 2014

2 P R O C E E D I N G S

3 (JURY OUT AT 9:08 A.M.)

4 THE COURT: GOOD MORNING AND WELCOME.

5 MR. MCELHINNY: GOOD MORNING, YOUR HONOR.

6 MR. PRICE: GOOD MORNING.

7 (JURY IN AT 9:08 A.M.)

8 THE COURT: GOOD MORNING, WELCOME. PLEASE TAKE A
9 SEAT.

10 YOU HAVE NOW HEARD ALL THE EVIDENCE AND YESTERDAY YOU
11 HEARD THE LAW. IT'S NOW TIME TO HEAR THE CLOSING ARGUMENTS OF
12 COUNSEL. EACH COUNSEL WILL HAVE AN OPPORTUNITY TO REVIEW THE
13 EVIDENCE AND ARGUE TO YOU WHAT HE OR SHE BELIEVES THAT EVIDENCE
14 HAS SHOWN.

15 I AGAIN REMIND YOU THAT WHAT THE ATTORNEYS SAY DURING
16 THEIR ARGUMENTS IS NOT EVIDENCE. IF ANY ATTORNEY MISSTATES THE
17 EVIDENCE OR THE LAW, YOU ARE TO RELY ON YOUR OWN RECOLLECTION
18 OF THE EVIDENCE AND ON THE JURY INSTRUCTIONS THAT I HAVE
19 PROVIDED TO YOU.

20 THE SEQUENCE OF THE CLOSING ARGUMENTS WILL BE AS FOLLOWS:
21 APPLE WILL GIVE THE FIRST CLOSING ARGUMENT ON ITS AFFIRMATIVE
22 CASE AGAINST SAMSUNG; SAMSUNG WILL THEN GIVE ITS CLOSING
23 ARGUMENT ON ITS DEFENSIVE CASE AGAINST APPLE'S AFFIRMATIVE
24 CASE, AS WELL AS ON SAMSUNG'S AFFIRMATIVE CASE AGAINST APPLE;
25 APPLE WILL THEN GIVE A CLOSING ARGUMENT ON ITS DEFENSIVE CASE

1 AGAINST SAMSUNG'S AFFIRMATIVE CASE.

2 SO UPON THE CONCLUSION OF THESE ARGUMENTS, YOU WILL BEGIN
3 DELIBERATIONS IN THE JURY ROOM. PLEASE REMEMBER THAT YOU ARE
4 NOT TO DISCUSS THE CASE UNTIL ALL EIGHT JURORS ARE PRESENT IN
5 THE JURY ROOM.

6 SO WITH THAT, I'M GOING TO INVITE APPLE'S COUNSEL TO COME
7 UP.

8 TIME IS NOW 9:10. GO AHEAD, PLEASE.

9 MR. MCELHINNY: THANK YOU. MAY IT PLEASE THE COURT.

10 **(MR. MCELHINNY GAVE HIS CLOSING ARGUMENT ON BEHALF OF THE**
11 **PLAINTIFF.)**

12 MR. MCELHINNY: LADIES AND GENTLEMEN OF THE JURY,
13 GOOD MORNING.

14 JURORS: GOOD MORNING.

15 MR. MCELHINNY: LET'S REMEMBER HOW WE GOT HERE. IN
16 JANUARY OF 2007, APPLE INTRODUCED THE IPHONE, A MULTITOUCH,
17 TOUCHSCREEN DEVICE THAT COMBINED A MUSIC PLAYER AND AN INTERNET
18 BROWSER AND A TELEPHONE.

19 THAT PRODUCT, AND THE NEW FEATURES THAT MADE IT
20 ACCESSIBLE, FUN, AND EASY TO USE, WERE REVOLUTIONARY.

21 I'M GOING TO TAKE A MINUTE HERE AND EXPLAIN A LITTLE BIT
22 ABOUT THE PROCESS. UP UNTIL NOW, YOU'VE SAT THERE PATIENTLY
23 AND THE LAWYERS HAVE BROUGHT YOU PAGES AND THEY PUT SLIDES ON
24 THE SCREEN.

25 THAT WONDERFUL WORLD IS GOING TO CHANGE THIS AFTERNOON AND

1 YOU'RE GOING TO GET LOCKED IN THIS LITTLE ROOM AND THEY'RE
2 GOING TO BRING IN ALL OF THESE TRAYS OF EXHIBITS AND THEY'RE IN
3 WHITE BINDERS. AND THE EXHIBITS ALL HAVE EXHIBIT NUMBERS ON
4 THEM, BUT THE PAGES AREN'T MARKED, THEY'RE NOT HIGHLIGHTED.
5 YOU'RE GOING TO HAVE TO FIND THOSE EXHIBITS YOURSELF.

6 SO WHAT I'M GOING TO DO -- MANY OF THE SLIDES THAT YOU'VE
7 SEEN ARE NOT GOING TO BE IN EVIDENCE, SO YOU WON'T FIND THOSE.
8 YOU WILL JUST FIND THE EXHIBITS.

9 SO WHAT I'M GOING TO DO AS I WALK THROUGH THIS THIS
10 MORNING IS I'M GOING TO CALL OUT EXHIBIT NUMBERS, AND IF THAT'S
11 HELPFUL TO YOU, YOU CAN TAKE THOSE EXHIBIT NUMBERS DOWN AND
12 YOU'LL BE ABLE TO FIND -- IF YOU'RE INTERESTED IN THESE
13 DOCUMENTS, YOU'LL BE ABLE TO FIND THAT DOCUMENT WHEN YOU LOOK
14 IN THE BINDERS LATER THIS AFTERNOON.

15 THIS DOCUMENT IS EXHIBIT 145. WE CALL IT THE GRAVITY TANK
16 DOCUMENT. THIS WAS A DOCUMENT THAT WAS PREPARED, YOU'LL
17 REMEMBER, BY SAMSUNG'S CONSULTANTS ANALYZING THE EFFECT OF THE
18 IPHONE, AND THEY CALLED IT REVOLUTIONARY.

19 THE IPHONE LITERALLY CREATED A NEW SMARTPHONE MARKET. IT
20 TOOK THE WORLD BY STORM. APPLE CREATED ONE OF THE MOST
21 SUCCESSFUL PRODUCTS EVER IN THE FIELD OF ELECTRONICS, AND IT
22 WAS THE MOST SUCCESSFUL UNTIL THE INTRODUCTION OF THE IPAD
23 THREE YEARS LATER IN 2010, AN ENTIRELY NEW AND REVOLUTIONARY
24 PRODUCT.

25 THESE PRODUCTS WERE CREATED BY TRUE GENIUSES, LIKE

1 STEVE JOBS, AND LIKE THE APPLE INVENTORS WHO CAME HERE TO
2 TESTIFY BEFORE YOU. PEOPLE, IF YOU CAN REMEMBER BACK NOW -- IT
3 SEEMS SO LONG AGO -- LIKE GREG CHRISTIE WHO CAME HERE AND
4 TESTIFIED ON BEHALF OF THE IPHONE, ORIGINAL IPHONE TEAM.

5 TIM MILLET, THOMAS DENIAU WHO CAME FROM PARIS WITH HIS
6 FRENCH ACCENT, AND ROBERTO GARCIA. THEY WERE, AND ARE, REAL
7 PEOPLE WHO, THROUGH GENIUS AND HARD WORK, HAVE MADE REAL
8 CONTRIBUTIONS TO THE WAY PEOPLE COMMUNICATE WITH EACH OTHER AND
9 SHARE INFORMATION.

10 THEY CAME HERE TO THIS COURTROOM. THEY FACED
11 CROSS-EXAMINATION AND THEY TESTIFIED BEFORE YOU.

12 AND AS YOU ALSO KNOW, THEIR INVENTIONS ARE PROTECTED BY
13 PATENTS THAT WERE ISSUED BY THE U.S. PATENT AND TRADEMARK
14 OFFICE.

15 WE SAW THAT MR. JOBS EXPRESSLY WARNED WOULD-BE COMPETITORS
16 THAT APPLE WAS SEEKING PATENT PROTECTION FOR ITS INVENTIONS, TO
17 PUT THOSE COMPETITORS ON NOTICE THAT THEY COULD NOT SIMPLY COPY
18 APPLE'S NOVEL FEATURES AND DESIGNS.

19 THAT PART IS HISTORY. IT IS UNCONTROVERTED. NOT A WORD
20 OF IT HAS BEEN CHALLENGED IN THIS TRIAL.

21 WE ARE HERE BECAUSE OF A SERIES OF DECISIONS BY SAMSUNG
22 ELECTRONICS. WE KNOW THAT IN JUNE 2007, SAMSUNG DID NOT EVEN
23 HAVE A TOUCHSCREEN SMARTPHONE. IT WASN'T EVEN WORKING ON THAT.

24 INSTEAD, IT SPECIALIZED IN LESS COMPLICATED FEATURE
25 PHONES.

1 WE ALSO KNOW THAT AT THAT TIME SAMSUNG WAS NOT
2 PARTICULARLY SUCCESSFUL. IT WAS ONLY SELLING ABOUT 5 PERCENT
3 OF THE PHONES IN THE UNITED STATES MARKETPLACE. IT WAS NOT A
4 LEADER, AND IT WAS NOT MAKING PROGRESS.

5 AND THEN WE SHOWED YOU EXHIBIT 149. WE KNOW THAT SAMSUNG
6 BROUGHT ALL OF ITS EXECUTIVES TOGETHER FOR A CRITICAL MEETING
7 IN FEBRUARY 2010 WHEN ITS TOP EXECUTIVE MADE CLEAR THAT SAMSUNG
8 WAS SUFFERING WHAT THEY CALLED A CRISIS OF DESIGN AND THAT ITS
9 MOST SOPHISTICATED CUSTOMERS, THE AMERICAN PHONE COMPANIES,
10 WERE TELLING SAMSUNG THAT THE ONLY WAY FORWARD FOR IT WAS TO,
11 QUOTE -- THIS IS THEIR WORDS -- TO "MAKE SOMETHING LIKE THE
12 IPHONE."

13 AND WE KNOW THAT THIS WAS FOLLOWED BY MONTH AFTER MONTH OF
14 FRENZIED ACTIVITY AT SAMSUNG WHEN SAMSUNG DESIGNERS CHANGED
15 PHONE AFTER PHONE THAT WAS UNDER DEVELOPMENT TO COPY FEATURE
16 AFTER FEATURE AFTER FEATURE FROM THE IPHONE, AND THAT SAMSUNG
17 BEGAN TO SELL THESE INFRINGING PRODUCTS IN THE UNITED STATES.

18 WE KNOW THAT THAT LED TO A SECOND CRISIS, AND IN
19 AUGUST 2010, THERE WAS A MEETING BETWEEN SAMSUNG AND APPLE AND
20 AT THAT TIME, AS YOU HEARD, APPLE WAS ACTUALLY SAMSUNG'S
21 LARGEST COMPETITOR -- CUSTOMER BECAUSE SAMSUNG -- APPLE BOUGHT
22 ITS COMPONENTS, ITS PARTS FROM SAMSUNG.

23 AND THEY HAD THIS MEETING, AND AT THE MEETING, APPLE
24 ACCUSED SAMSUNG OF COPYING AND ACCUSED SAMSUNG OF INFRINGING
25 APPLE PATENTS AND DID EVERYTHING IT COULD DO TO CONVINCE

1 SAMSUNG TO COMPETE FAIRLY INSTEAD OF UNFAIRLY.

2 BUT WE KNOW THAT SAMSUNG REJECTED THAT REQUEST AND
3 CONTINUED TO RELEASE VERSION AFTER VERSION OF INFRINGING PHONES
4 AND TABLETS, INCLUDING THE MORE THAN 37 MILLION DEVICES THAT
5 ARE AT ISSUE IN THIS CASE.

6 AND UNLIKE IN FAIRY TALES, WE KNOW THAT SAMSUNG'S ILLEGAL
7 STRATEGY HAS BEEN WILDLY SUCCESSFUL. YOU HEARD THAT THEY HAVE
8 DRIVEN EVERY OTHER COMPETITOR, INCLUDING ALMOST EVERY OTHER
9 ANDROID COMPETITOR, ALMOST ENTIRELY OUT OF THE MARKET.

10 THE ONLY PRODUCTS THAT ARE SELLING TODAY ARE APPLE
11 PRODUCTS AND SAMSUNG PRODUCTS THAT INFRINGE APPLE PATENTS. IT
12 IS LITERALLY A TWO HORSE RACE.

13 AND, FINALLY, WE KNOW THAT SAMSUNG'S STRATEGY HAS UNFAIRLY
14 INJURED APPLE, THE COMPANY AND THE EMPLOYEES WHO WERE THE
15 SOURCE OF ALL THIS CREATIVITY.

16 THAT IS HOW WE CAME TO THIS PLACE.

17 AND SO NOW IT IS TIME FOR YOU, A JURY CHOSEN BY LOT TO
18 REPRESENT THIS COMMUNITY, TO DO JUSTICE, TO ASSEMBLE THE FACTS,
19 TO APPLY THE LAW TO THOSE FACTS, AND TO AWARD WHATEVER DAMAGES
20 THAT YOU FIND ARE APPROPRIATE. THAT'S WHY WE'RE HERE.

21 FOUR SHORT WEEKS AGO I STOOD BEFORE YOU AND I TOLD YOU TWO
22 THINGS THAT I WOULD LIKE TO REPEAT THIS MORNING. FIRST, I TOLD
23 YOU THAT THERE WERE PROBLEMS WITH LAWSUITS. IT'S NOT EASY TO
24 BE A JUROR IN A CASE AS COMPLICATED AS THIS. THE TESTIMONY
25 COMES IN ONE WITNESS AT A TIME, YOU SEE ONLY BITS AND PIECES OF

1 DOCUMENTS ON THE SCREEN, AND YOU DON'T EVEN FIND OUT THE LEGAL
2 PRINCIPLES UNTIL THE LAST DAY OF THE TRIAL. IT IS DIFFICULT
3 AND WE GREATLY APPRECIATE YOUR WILLINGNESS TO UNDERTAKE THAT
4 TASK.

5 I ALSO TOLD YOU THAT ON THE APPLE SIDE, WE FELT IT WAS OUR
6 JOB TO DO WHAT WE COULD DO TO HELP YOU WITH YOUR JOB. IT WAS
7 OUR JOB TO PRESENT THE EVIDENCE IN A CLEAR AND HELPFUL WAY, AND
8 IT IS BILL LEE'S AND MY JOB THIS MORNING TO TRY TO BRING THAT
9 EVIDENCE TOGETHER IN A WAY THAT WE HOPE WILL BE USEFUL TO YOU
10 WHEN YOU BEGIN YOUR DELIBERATIONS.

11 TO DO THAT, I'M GOING TO USE THE VERDICT FORM AND THE
12 INSTRUCTIONS THAT JUDGE KOH READ TO YOU YESTERDAY. THE VERDICT
13 FORM CONTAINS ALL THE QUESTIONS YOU WILL BE ASKED TO ANSWER.
14 THE JURY INSTRUCTIONS TELL YOU HOW TO GO ABOUT ANSWERING THOSE
15 QUESTIONS.

16 CRITICALLY, THE INSTRUCTIONS HELP YOU DECIDE WHICH OF THE
17 EVIDENCE YOU HAVE SEEN IS RELEVANT TO THE QUESTIONS YOU HAVE TO
18 DECIDE AND WHICH OF THE EVIDENCE YOU HAVE SEEN HAS BEEN AN
19 ATTEMPT TO CONFUSE, TO MAKE YOUR JOB MORE DIFFICULT AND YOUR
20 ANSWERS LESS ACCURATE.

21 THE FIRST THING I WANT TO MAKE CLEAR IS WHO THE PARTIES
22 ARE TO THIS CASE. OBVIOUSLY APPLE IS THE PLAINTIFF IN THE
23 FIRST PART OF THE CASE. APPLE INVENTED THE FIVE PATENTS THAT
24 WE BROUGHT IN FRONT OF YOU, AND IT OWNS THOSE FIVE PATENTS.

25 THE FIRST DEFENDANT IN OUR CASE IS SAMSUNG ELECTRONICS

1 CORPORATION, OR SEC. AND AS YOU HEARD, SEC IS LOCATED IN
2 SUWON, SOUTH KOREA. SEC OWNS THE OTHER TWO DEFENDANTS, SAMSUNG
3 ELECTRONICS AMERICA AND SAMSUNG TELECOMMUNICATIONS AMERICA.

4 SEC MANUFACTURES PHONES AND TABLETS AND SELLS THEM
5 DIRECTLY TO ITS SUBSIDIARIES IN THE UNITED STATES.

6 SEC DECIDES WHAT SOFTWARE IS GOING TO BE INSTALLED IN THE
7 PHONES IT SELLS IN THE UNITED STATES. IT WAS SEC THAT CHOSE TO
8 USE THE ANDROID OPERATING SYSTEM. SEC SETS THE PRICES AT WHICH
9 THE SUBSIDIARIES SELL THE ACCUSED PRODUCTS IN THE
10 UNITED STATES.

11 AND AS YOU MAY REMEMBER WHEN JUSTIN DENISON TESTIFIED, HE
12 TESTIFIED THAT ALL OF THE EMPLOYEES OF ALL THE SAMSUNG
13 COMPANIES SEE THEMSELVES AS PART OF SEC.

14 SOMEWHAT STRANGELY, NO EXECUTIVE FROM SEC TESTIFIED AT
15 THIS TRIAL. NO ONE CAME TO EXPLAIN TO YOU THE DECISIONS THAT
16 SEC MADE, TO TELL YOU WHY THOSE DECISIONS WERE MADE, OR TO
17 DEFEND THEMSELVES IN ANY WAY AGAINST THE SERIOUS ACCUSATIONS
18 THAT YOU HAVE BEFORE YOU. NONE OF THEM WERE BRAVE ENOUGH TO
19 COME HERE AND FACE CROSS-EXAMINATION.

20 SAMSUNG ELECTRONICS OF AMERICA, WHO WE CALL SEA, IS A U.S.
21 CORPORATION HEADQUARTERED IN NEW JERSEY. SEA SELLS THE TABLETS
22 ACCUSED IN THIS CASE DIRECTLY TO CARRIERS, STORES, AND
23 CONSUMERS IN THE UNITED STATES.

24 NO SEA EMPLOYEE TESTIFIED AT THIS TRIAL.

25 FINALLY, SAMSUNG TELECOMMUNICATIONS OF AMERICA, STA, SELLS

1 SAMSUNG SMARTPHONES TO CARRIERS, STORES, AND CONSUMERS IN THE
2 UNITED STATES. STA IS HEADQUARTERED IN TEXAS.

3 WITH THE EXCEPTION OF ONE DESIGNER, EVERY SAMSUNG WITNESS
4 IN THIS CASE, MR. SOHN, THE FORMER CEO, MR. PENDLETON,
5 MR. DENISON, MR. SHEPPARD, AND MR. DICARLO WORKS OR WORKED FOR
6 STA DURING THE RELEVANT TIME PERIODS, AND ALL OF THESE GUYS
7 WERE MARKETING PEOPLE. NOT ONE SOFTWARE ENGINEER. NOT ONE
8 PERSON WHO COULD TALK ABOUT HOW THE INFRINGING PHONES CAME TO
9 BE.

10 NOW I WANT TO TALK ABOUT THE PATENTS. FOR EACH OF THE
11 FIVE PATENTS IN THIS CASE, YOU WILL BE ASKED THREE QUESTIONS.

12 THE FIRST QUESTION IS, DID ANY OF THE THREE SAMSUNG
13 COMPANIES INFRINGE THE PATENT?

14 THE SECOND QUESTION IS, IF THERE WAS INFRINGEMENT, WAS
15 THAT INFRINGEMENT WILLFUL?

16 AND, THIRD, DID SAMSUNG PROVE, BY CLEAR AND CONVINCING
17 EVIDENCE, THAT THE PATENT IS INVALID?

18 IF YOU FIND THAT THE PATENT WAS INFRINGED, YOU WILL BE
19 ASKED -- THAT A VALID PATENT WAS INFRINGED, YOU WILL THEN BE
20 ASKED TO AWARD DAMAGES, BUT I'M GOING TO DEAL WITH DAMAGES
21 SEPARATELY.

22 LET'S START WITH THE '721 PATENT. WE ARE ASSERTING, AS
23 YOU RECALL, CLAIM 8 OF THAT PATENT.

24 YOU WILL REMEMBER THAT PROFESSOR COCKBURN CAREFULLY WALKED
25 US THROUGH THE ELEMENTS OF CLAIM 8 AND TESTIFIED THAT SIX

1 SAMSUNG PHONES, WHICH HE DIVIDED INTO FOUR FAMILIES, INFRINGED
2 THE '721 PATENT.

3 YOU CAN SEE THE FOUR FAMILIES ON THIS SLIDE.

4 LET'S BE CLEAR. YOU HEARD NO DEFENSE FROM SAMSUNG TO FIVE
5 OF THESE SIX PHONES.

6 SAMSUNG'S EXPERT ON THE SLIDE TO UNLOCK WAS
7 PROFESSOR GREENBERG AND HE ONLY DEFENDED ONE PHONE, THE GALAXY
8 NEXUS.

9 FOR THE OTHER FIVE, HE PRESENTED NO DEFENSE.

10 I WANT TO POINT OUT ONE THING VERY SPECIFICALLY. FOUR
11 WEEKS AGO IN HIS OPENING, SAMSUNG'S COUNSEL TOLD YOU THAT
12 SAMSUNG'S PUZZLE PIECE DESIGN, WHICH YOU SEE HERE ON THE
13 STRATOSPHERE PHONE, DID NOT INFRINGE. HE EVEN SHOWED YOU A
14 VIDEO CLIP.

15 BUT NO SAMSUNG WITNESS BACKED THAT UP.
16 PROFESSOR GREENBERG DID NOT DEFEND THE PUZZLE PIECE. HE
17 COULDN'T, BECAUSE THE CLAIM LANGUAGE OF THE '721 PATENT READS
18 ON IT DIRECTLY.

19 THERE IS NOTHING IN THE CLAIM LANGUAGE ABOUT MOVING ALONG
20 A TRACK. THE PATENT CLAIMS REQUIRE CONTACT WITH AN UNLOCK
21 IMAGE.

22 LET'S GO BACK AND LOOK AT THE PHONE. THE PUZZLE PIECE IS
23 THE UNLOCK IMAGE. THE CLAIMS REQUIRE CONTINUOUSLY MOVING THAT
24 UNLOCK IMAGE AND UNLOCKING THE DEVICE WHEN THE UNLOCK IMAGE IS
25 MOVED TO A PREDEFINED UNLOCK REGION.

1 THE PREDEFINED REGION IS OBVIOUSLY THE MISSING PIECE OF
2 THE PUZZLE.

3 AND THE CLAIMS REQUIRE VISUAL CUES TO INDICATE THE
4 DIRECTION OF MOVEMENT OF THE UNLOCK IMAGE REQUIRED TO UNLOCK
5 THE DEVICE.

6 THE PUZZLE PIECE DOES ALL OF THAT.

7 SO YOU MAY ASK YOURSELF, WHY WOULD SAMSUNG'S LAWYER MAKE
8 AN ARGUMENT TO YOU THAT HE KNEW, THAT HE KNOWS THAT SAMSUNG HAD
9 NO EVIDENCE TO SUPPORT? WAS HE TRYING TO HELP YOU TO GET TO A
10 CORRECT DECISION?

11 PROFESSOR GREENBERG DID DEFEND ONE PHONE, THE GALAXY
12 NEXUS. HE SAID IT DIDN'T INFRINGE BECAUSE WHEN YOU TOUCH THE
13 UNLOCK IMAGE, THE GRAPHICS CHANGE.

14 BUT AS PROFESSOR COCKBURN EXPLAINED, THE PATENT CLAIM
15 LANGUAGE IS NOT LIMITED TO ANY PARTICULAR GRAPHIC DEPICTION.
16 HE SHOWED YOU THE SPECIFICATION WHICH EXPRESSLY ANTICIPATES
17 THAT ANIMATED GRAPHICS MIGHT BE USED.

18 SO REALLY, SAMSUNG HAS NO DEFENSE TO INFRINGEMENT ON ANY
19 OF THE SIX ACCUSED PHONES.

20 LET ME HELP YOU WITH SOMETHING ELSE. YOU ARE GOING TO
21 HAVE A TON OF PHONES WITH YOU IN THE JURY ROOM. YOU'VE BEEN
22 TOLD YOU CAN'T PLAY GAMES WITH THEM, BUT YOU'RE GOING TO HAVE
23 THE PHONES IN THERE.

24 EACH ONE WILL HAVE AN EXHIBIT NUMBER ON IT. IF YOU WANT
25 TO FIND THE PHONE THAT DEMONSTRATES THE INFRINGING ACTIVITY FOR

1 ANY OF A PARTICULAR -- FOR A PARTICULAR PATENT, YOU CAN FIND
2 THE RIGHT EXHIBIT NUMBER BY LOOKING AT THE CORRECT COLUMN IN
3 THE VERDICT FORM. SO AFTER THE PHONES THAT ARE ACCUSED, FOR
4 EXAMPLE, THE ADMIRE, YOU'LL SEE THE EXHIBIT NUMBER JX 28B, SO
5 IF YOU WANT TO TEST THE ADMIRE FOR THIS PATENT, YOU CAN LOOK AT
6 THAT EXHIBIT.

7 TWO THINGS TO REMEMBER: NOT ALL OF YOUR EXHIBITS INFRINGE
8 EVERY PATENT, SO YOU HAVE TO BE SURE THAT YOU HAVE THE RIGHT
9 EXAMPLE FOR THE PARTICULAR PATENT THAT YOU ARE LOOKING AT.

10 SECOND, PLEASE REMEMBER THE JUDGE'S INSTRUCTION NOT TO
11 ACCEPT SOFTWARE UPDATES SO THAT THE EXHIBITS WILL CONTINUE TO
12 BE ACCURATE.

13 THE QUESTION THEN IS, WHICH OF THE SAMSUNG COMPANIES IS
14 GUILTY FOR INFRINGING THIS PATENT?

15 AS YOU WILL SEE FROM THE INSTRUCTIONS, THERE ARE THREE
16 SEPARATE WAYS A COMPANY CAN COMMIT PATENT INFRINGEMENT.

17 THE FIRST IS CALLED DIRECT INFRINGEMENT AND IT IS DEFINED
18 IN YOUR INSTRUCTION NUMBER 24. WHOEVER MAKES, USES, OR SELLS
19 THE ACCUSED DEVICE IN THE UNITED STATES, THAT'S PATENT
20 INFRINGEMENT.

21 INSTRUCTION NUMBER 25 PRESENTS GUIDELINES FOR DETERMINING
22 WHEN SALES OCCURRED IN THE UNITED STATES.

23 APPLYING THESE INSTRUCTIONS, WE BELIEVE THAT SEC IS LIABLE
24 FOR DIRECT INFRINGEMENT OF THE '721 PATENT BECAUSE IT SELLS ALL
25 OF THE ACCUSED PHONES TO STA AND SHIPS THEM TO STA IN THE

1 UNITED STATES FOR RESALE TO CUSTOMERS.

2 WE BELIEVE THAT STA IS LIABLE FOR DIRECT INFRINGEMENT
3 BECAUSE IT SELLS THE ACCUSED SMARTPHONES IN THE UNITED STATES.

4 WE BELIEVE THAT WHEN YOU ADDRESS QUESTION NUMBER 4 IN THE
5 VERDICT FORM, YOU SHOULD FIND INFRINGEMENT BY BOTH SEC AND STA.

6 LET ME STOP HERE TO POINT OUT THAT DESPITE ALL THE TIMES
7 THAT SAMSUNG MENTIONED IT, YOU WILL NOT FIND A SINGLE QUESTION
8 ABOUT GOOGLE IN YOUR VERDICT FORM OR IN YOUR JURY INSTRUCTIONS.
9 GOOGLE IS NOT A DEFENDANT IN THIS CASE.

10 IF YOU FIND DIRECT INFRINGEMENT BY STA, YOU WILL BE ASKED
11 IN THE VERDICT FORM WHETHER OR NOT SEC -- THIS IS A LEGAL
12 TERM -- INDUCED THAT INFRINGEMENT. INDUCEMENT IS A SEPARATE
13 WAY OF COMMITTING PATENT INFRINGEMENT.

14 INSTRUCTION 28 SETS OUT THREE ELEMENTS OF INDUCING
15 INFRINGEMENT.

16 FIRST, SEC MUST HAVE INTENTIONALLY TAKEN ACTION THAT
17 ACTUALLY INDUCED DIRECT INFRINGEMENT.

18 THIS IS WHY WE BROUGHT YOU THE EVIDENCE THAT SEC MAKES ALL
19 THE DEVICES. IT DESIGNS THE PHONES, IT SETS THE PRICES, AND
20 THE AMERICAN SUBSIDIARIES REPORT BACK THEIR SALES AND
21 STRATEGIES TO HEADQUARTERS, AS YOU SAW ON THE EXHIBITS.

22 SECOND, SEC MUST HAVE BEEN AWARE OF THE ASSERTED PATENTS.
23 THIS IS WHY WE READ YOU UNDISPUTED FACT NUMBER 13 IN WHICH SEC
24 ADMITS THAT IT HAS KNOWN OF THESE PATENTS SINCE AT LEAST THE
25 LAWSUIT WAS FILED.

1 AND, THIRD, SEC MUST HAVE KNOWN THAT THE ACTS IT WAS
2 CAUSING WOULD INFRINGE. THE INSTRUCTION GOES ON TO SAY THAT
3 THIS KNOWLEDGE ELEMENT CAN BE SATISFIED BY WHAT THE LAW CALLS
4 WILLFUL BLINDNESS.

5 HERE WE ASK YOU TO REMEMBER THE SAMSUNG DOCUMENTS SHOWING
6 THAT SAMSUNG'S ADOPTION OF THE SLIDE TO UNLOCK WAS INTENTIONAL,
7 THAT WE ASKED THEM TO STOP THE INFRINGEMENT, THAT THEY SHOWED
8 UP HERE IN COURT WITH LITERALLY NO DEFENSE, AND THAT DESPITE
9 OUR EFFORTS, SAMSUNG CONTINUED TO SELL INFRINGING PHONES.

10 SAMSUNG CLEARLY KNEW THAT IT WAS CAUSING INFRINGEMENT.

11 WE ASK THAT AFTER YOU CONSIDER ALL THIS EVIDENCE, YOU FIND
12 THAT SEC INDUCED ITS SUBSIDIARY, STA, TO COMMIT INFRINGEMENT OF
13 THE '721 PATENT AND THAT YOU ANSWER YES TO QUESTION 5 ON YOUR
14 VERDICT FORM.

15 FINALLY, YOU WILL GET ASKED WHETHER OR NOT SEC COMMITTED
16 WHAT THE LAW CALLS CONTRIBUTORY INFRINGEMENT. THIS IS A THIRD
17 WAY IN WHICH A PARTY CAN INFRINGE.

18 CONTRIBUTORY INFRINGEMENT IS DEFINED IN INSTRUCTION
19 NUMBER 29 OF THE JURY INSTRUCTIONS. AGAIN, IT HAS THREE
20 ELEMENTS.

21 ONE, THAT SEC SUPPLIED AN IMPORTANT COMPONENT OF THE
22 INFRINGING PART OF THE PRODUCT. HERE YOU KNOW THAT IT WAS SEC
23 THAT MADE ALL OF THE KEY DECISIONS ABOUT WHAT SOFTWARE WAS
24 PLACED ON THE INFRINGING PHONES.

25 TWO, THAT THE COMPONENT IS NOT A COMMON COMPONENT SUITABLE

1 FOR NON-INFRINGING USE. OBVIOUSLY ALL THIS SOFTWARE IS
2 SPECIFICALLY DESIGNED FOR PHONES. IT HAS NO OTHER USE.

3 AND, THREE, THAT SAMSUNG SUPPLIED THE COMPONENT WITH
4 KNOWLEDGE OF THE PATENT AND KNOWLEDGE THAT THE COMPONENT WAS
5 ESPECIALLY MADE OR ADAPTED FOR USE IN AN INFRINGING MANNER.

6 THIS IS SIMILAR TO WHAT WE LOOKED AT BEFORE. GIVEN
7 SAMSUNG'S ADMITTED KNOWLEDGE OF THE PATENT AND INTENTIONAL
8 COPYING OF THE PATENTED FEATURES, IT CLEARLY KNEW THAT ITS
9 SOFTWARE WAS DESIGNED TO INFRINGE.

10 AFTER YOU CONSIDER THESE FACTORS, WE ASK THAT YOU ANSWER
11 YES TO QUESTION NUMBER 6 ON THE VERDICT FORM.

12 AFTER YOU ANSWER THE INFRINGEMENT QUESTIONS, YOU WILL BE
13 ASKED WHETHER OR NOT SAMSUNG PROVED THAT THE '721 PATENT WAS
14 INVALID. THE INSTRUCTIONS YOU WILL NEED ARE INSTRUCTION
15 NUMBER 31, WHICH DESCRIBES THE BURDEN OF PROOF, AND INSTRUCTION
16 NUMBER 34, WHICH DESCRIBES THE TEST FOR OBVIOUSNESS.

17 INSTRUCTION 31, SAMSUNG -- TELLS US THAT SAMSUNG HAS TO
18 PROVE INVALIDITY BY WHAT THE LAW CALLS CLEAR AND CONVINCING
19 EVIDENCE, WHICH IS A HIGHER THAN NORMAL STANDARD IN A CIVIL
20 CASE.

21 THE KEY QUESTION FOR OBVIOUSNESS IN INSTRUCTION 34 IS
22 WHETHER OR NOT THE INVENTION WOULD HAVE BEEN OBVIOUS TO A
23 PERSON OF ORDINARY SKILL IN THE FIELD AT THE TIME OF THE
24 INVENTION.

25 BUT THE INSTRUCTION SETS OUT SEVERAL IMPORTANT RULES.

1 FIRST, YOU ARE REQUIRED TO CONSIDER WHAT WAS THE CONTENT
2 OF THE PRIOR ART? WHAT WAS KNOWN BEFORE THE INVENTION?

3 SECOND, YOU ARE SUPPOSED TO CONSIDER WHAT THE LAW CALLS
4 ADDITIONAL FACTORS THAT MAY BE RELEVANT TO OBVIOUSNESS. I
5 THINK OF THESE AS REALITY TESTS TO SEE HOW THE WORLD ACTUALLY
6 REACTED TO THE INVENTION AT THE TIME.

7 BUT MOST IMPORTANT, YOU CANNOT PROVE THAT SOMETHING IS
8 OBVIOUS JUST BY GOING AND FINDING BITS AND PIECES IN THE PRIOR
9 ART AND TRYING TO PUT THEM TOGETHER.

10 AS JUDGE KOH HAS TOLD YOU, YOU CANNOT USE HINDSIGHT.

11 IN OTHER WORDS, YOU CAN'T DO EXACTLY WHAT SAMSUNG HAS DONE
12 HERE. YOU CANNOT USE THE PATENT ITSELF AS A ROADMAP TO TRY TO
13 FIND THE VARIOUS ELEMENTS IN THE PRIOR ART.

14 YOU KNOW FROM YOUR OWN EXPERIENCE THAT MANY TIMES WHEN YOU
15 POINT OUT SOMETHING NEW TO SOMEONE, YOU SAY, "LOOK AT THIS,
16 THIS IS A NEW IDEA," THE PERSON WILL GO, "OH, YEAH. WELL,
17 THAT'S OBVIOUS."

18 BUT WHERE WERE THEY BEFORE YOU POINTED IT OUT TO THEM?
19 IT'S ONCE YOU SEE THE IDEA THAT, ALL OF A SUDDEN, IN
20 RETROSPECT, USING HINDSIGHT, IT APPEARS OBVIOUS.

21 WHERE WAS SAMSUNG BEFORE IT SAW THE IPHONE? YOU KNOW THE
22 ANSWER TO THAT QUESTION. THEY DIDN'T EVEN HAVE A SMARTPHONE.

23 PROFESSOR GREENBERG TESTIFIED THAT THE '721 PATENT WOULD
24 HAVE BEEN OBVIOUS IN LIGHT OF A PHONE MANUAL FOR A EUROPEAN
25 PHONE CALLED THE NEONODE AND AN ARTICLE BY A PERSON NAMED

1 PLAISANT.

2 AS YOU SAW, THERE WERE HUGE PROBLEMS WITH THIS POSITION.
3 BOTH OF THESE REFERENCES THAT HE WAS TALKING ABOUT WERE
4 ACTUALLY BEFORE THE PTO EXAMINERS WHO ISSUED THE PATENT, AND
5 YOU CAN SEE THAT ON THE FACE OF THE PATENT WHERE THEY ARE
6 LISTED.

7 LET ME PAUSE HERE FOR A MOMENT. YOU'RE GOING TO SEE,
8 THROUGHOUT ALL OF THESE PATENTS, THAT THE EXAMINERS WHO LOOKED
9 AT THEM WERE EXTREMELY THOROUGH. THE PROSECUTION HISTORY,
10 WHICH IS IN EVIDENCE, IS HUNDREDS OF PAGES LONG. THAT'S JX 8
11 FOR ONE OF OUR PATENTS. MANY PATENTS AND PUBLICATIONS ARE
12 CITED.

13 EVEN IN A COUPLE OF CASES WHERE SAMSUNG HAS FOUND SOME
14 REFERENCE THAT MAY NOT HAVE BEEN CITED, NO SAMSUNG EXPERT HAS
15 EVER TESTIFIED TO YOU UNDER OATH THAT THIS NEW REFERENCE WAS
16 MORE RELEVANT THAN THE ART THAT THE EXAMINER ACTUALLY LOOKED
17 AT.

18 THAT'S AN IMPORTANT THING, BECAUSE IF THE EXAMINER HAS
19 LOOKED AT MORE RELEVANT ART, OTHER ART IS NOT IMPORTANT
20 ANYMORE. IT'S AN IMPORTANT GAP IN THE EVIDENCE THAT WAS NOT
21 FILLED IN HERE. NO ONE HAS EVER SAID THESE NEW THINGS ARE SO
22 IMPORTANT AND THE EXAMINER NEVER SAW ANYTHING LIKE IT.

23 SPECIFICALLY WITH RESPECT TO NEONODE AND PLAISANT,
24 PROFESSOR COCKBURN POINTED OUT THAT NEONODE HAS NO VISUAL CUES
25 AND NO CONTINUOUS MOVEMENT.

1 THESE X'S ON THE SCREEN SHOW THAT ELEMENTS ARE MISSING.

2 HE POINTED OUT THAT NOT ONLY DID PLAISANT NOT FILL OUT THE
3 GAPS, PLAISANT ACTUALLY TAUGHT AWAY FROM USING A SLIDE IMAGE.
4 YOU MAY REMEMBER, HE PUT THE ARTICLE UP AND IT SAID THAT PEOPLE
5 WHO LOOKED AT THIS HAD MORE PROBLEMS WITH SLIDERS. THEY WERE
6 HARDER TO IMPLEMENT. IT WAS NOT AS GOOD.

7 THERE WAS NO CLEAR AND CONVINCING EVIDENCE THE '721 PATENT
8 IS INVALID.

9 SO THEN WE MOVE TO THE ADDITIONAL FACTORS TO BE CONSIDERED
10 UNDER INSTRUCTION -- UNDER THE INSTRUCTION.

11 PROFESSOR GREENBERG SAID THAT NO FACTOR, NONE OF THESE,
12 WEIGHED IN FAVOR OF VALIDITY.

13 BUT HE SIMPLY IGNORED THE EVIDENCE OF PUBLIC ACCLAIM. HE
14 IGNORED THE APPLE AD THAT WE SHOWED YOU THAT ACTUALLY FEATURED
15 THE SLIDE TO UNLOCK FEATURE.

16 HE IGNORED DOCUMENT AFTER DOCUMENT SHOWING THAT SAMSUNG
17 INTENTIONALLY COPIED THIS FEATURE FROM THE IPHONE.

18 PLAINTIFF'S EXHIBIT 121, WHICH IS THE VICTORY PHONE,
19 PLAINTIFF'S EXHIBIT 120, WHICH IS THE BEHOLD PHONE, PLAINTIFF'S
20 EXHIBIT 219, WHICH WAS THE KEPLER PHONE, AND PLAINTIFF'S
21 EXHIBIT 157, WHICH WAS THE AMETHYST PHONE, DR. GREENBERG DIDN'T
22 MENTION THEM.

23 EVERY ONE OF THOSE SAMSUNG INTERNAL DOCUMENTS COPIES SLIDE
24 TO UNLOCK FROM THE IPHONE. NOT ONE OF THEM SUGGESTS THAT THE
25 IDEA WAS OBVIOUS OR THAT SAMSUNG HAD IT FIRST, THAT IT'S IN THE

1 GOOGLE SOFTWARE. NONE OF THE THINGS YOU HAVE HEARD FROM
2 SAMSUNG IN THIS TRIAL ARE SUPPORTED BY A SINGLE PAGE OF
3 SAMSUNG'S OWN INTERNAL DOCUMENTS. THEY ARE TRYING TO SELL YOU
4 A VERSION OF THE STORY THAT NEVER, EVER HAPPENED.

5 LET'S TALK ABOUT THAT FOR A MINUTE.

6 THIS IS A TRIAL. I MEAN, OBVIOUSLY THE PARTIES DISAGREE.
7 IT'S NOT UNUSUAL FOR PARTIES TO SEE THE WORLD DIFFERENTLY AND
8 YOU HAVE TO DECIDE WHERE THE TRUTH IS.

9 BUT IN THAT REGARD, WE HAVE TRIED TO PROVE EVERY IMPORTANT
10 FACT FROM SAMSUNG'S OWN DOCUMENTS. THOSE DOCUMENTS WERE
11 CREATED BEFORE THIS LAWSUIT EXISTED. THEY SHOW WHAT THE PEOPLE
12 AT SAMSUNG WERE ACTUALLY THINKING AT THE TIME. THEY NEVER
13 THOUGHT THOSE DOCUMENTS WOULD SEE THE LIGHT OF DAY.

14 ON THE OTHER HAND, EVERY POINT SAMSUNG HAS TRIED TO MAKE
15 IN THIS TRIAL IS CONTRADICTED BY ITS OWN DOCUMENTS. THEIR
16 WITNESSES SAY A; THEIR OWN DOCUMENTS SAY B. YOU HAVE SEEN THAT
17 IN CASE AFTER CASE.

18 BUT SOMEHOW THAT DOESN'T SEEM TO EMBARRASS THEM.

19 SO BACK TO THE FACTORS THAT ARE RELEVANT TO OBVIOUSNESS.

20 ANOTHER FACTOR IS PRAISE FROM OTHERS IN THE FIELD. AND
21 YOU MAY REMEMBER, IT'S BEEN A WHILE NOW, BUT WHEN WE SAW WHAT
22 SAMSUNG'S EUROPEAN DESIGNERS ACTUALLY SAID -- THIS IS SAMSUNG'S
23 DESIGNERS -- WHEN THEY SAW THE SLIDE TO UNLOCK, WHICH IS
24 EXHIBIT 119, THEY DIDN'T SAY IT WAS OBVIOUS. THEY SAID IT WAS
25 A "CREATIVE WAY TO SOLVE USER INTERFACE COMPLEXITY."

1 IF YOU WEIGH THESE FACTORS, YOU WILL FIND THAT THEY
2 SUPPORT THE CONCLUSION THAT SLIDE TO UNLOCK WAS AN IMPORTANT
3 AND NOVEL INVENTION.

4 IF YOU AGREE, YOU WILL ANSWER QUESTION 8 IN THE VERDICT
5 FORM NO, SAMSUNG HAS NOT PROVEN THAT THIS CLAIM IS INVALID.

6 THAT WILL BRING YOU TO THE QUESTION OF WHETHER OR NOT
7 SAMSUNG'S INFRINGEMENT WAS WILLFUL.

8 INSTRUCTION NUMBER 30 WILL TELL YOU THAT THE TEST FOR
9 WILLFULNESS IS ONE OF RECKLESS DISREGARD, WHICH MEANS THAT
10 SAMSUNG ACTUALLY KNEW OR IT WAS SO OBVIOUS THAT IT SHOULD HAVE
11 KNOWN THAT ITS ACTIONS CONSTITUTED INFRINGEMENT OF A VALID AND
12 ENFORCEABLE PATENT.

13 HERE AGAIN, COPYING PLAYS A BIG PART AND YOU CAN FIND
14 WILLFULNESS IF YOU FIND THAT SAMSUNG COPIED OUR PATENTED
15 FEATURES.

16 I'M NOT GOING TO GO BACK THROUGH THE DOCUMENTS, BUT THINK
17 ABOUT THE BIG PICTURE FOR A MOMENT. SAMSUNG KNEW ABOUT THE
18 PATENTS, IT KNEW IT WAS FACING ITS OWN CRISIS OF DESIGN, AND IT
19 INTENTIONALLY COPIED THE IPHONE.

20 WHEN IT GOT HERE TO TRIAL, IT PRESENTED NO INFRINGEMENT
21 DEFENSE FOR FIVE OF THE PRODUCTS THAT WERE ACCUSED, AND AN
22 INVALIDITY DEFENSE THAT HAD ALREADY BEEN REJECTED BY THE PTO.

23 THE FACT THAT IT ACTED WILLFULLY IS BEYOND DISPUTE.

24 IF YOU AGREE, YOU SHOULD ANSWER YES TO QUESTION NUMBER 7
25 ON THE VERDICT FORM FOR BOTH SEC AND STA, AND THAT WILL BE IT

1 FOR THE '721 PATENT.

2 THE NEXT PATENT, THE '172 AUTOMATIC WORD CORRECTION PATENT
3 WILL BE A LOT QUICKER BECAUSE YOU DON'T GET ASKED ANY QUESTIONS
4 ABOUT INFRINGEMENT. JUDGE KOH HAS ALREADY FOUND INFRINGEMENT
5 AS A MATTER OF LAW. SEVEN SAMSUNG PHONES INFRINGE THE '172
6 PATENT. YOU WILL FIND THEM LISTED IN PLAINTIFF'S EXHIBIT 222A
7 AT PAGE 7.

8 HERE'S AN AD FOR EXHIBIT 222A. THERE'S A LOT OF DATA IN
9 THIS CASE. THERE'S A LOT OF DAMAGES NUMBERS. THERE'S A LOT OF
10 LISTS OF PHONES. WE HAVE LISTED ALL OF OUR -- ALL THE DATA
11 THAT WE THINK YOU WILL NEED, AND I'LL MENTION IT SEVERAL TIMES
12 TODAY, IN THIS ONE EXHIBIT, 222A, AND THAT'S WHERE YOU WILL
13 FIND ALL OF THE NUMBERS AND THE LISTS OF ACCUSED DEVICES AND
14 EVERYTHING IN ONE PLACE IF THAT'S HELPFUL TO YOU.

15 I'M GOING TO BE SHOWING YOU SOME SLIDES, YOU WON'T HAVE
16 THE SLIDES, BUT YOU WILL HAVE THIS EXHIBIT 222A.

17 SO FOR THIS PATENT, WE CAN MOVE DIRECTLY TO VALIDITY.
18 THIS TIME IT WAS PROFESSOR WIGDOR WHO TESTIFIED THAT, IN HIS
19 VIEW, THE PTO WAS WRONG. PROFESSOR WIGDOR ARGUED THAT THE '172
20 INVENTION WAS INVALID DUE TO A COMBINATION OF THE ROBINSON AND
21 XRGOMICS PATENTS.

22 BUT AS IT TURNED OUT, THE PTO HAD ALL THE FIGURES -- HE
23 DIDN'T MENTION THIS ON DIRECT, BUT ON CROSS-EXAMINATION, HE
24 ADMITTED THAT THE PTO HAD ALL THE FIGURES FROM THE ROBINSON
25 PATENT BEFORE IT IN ANOTHER PATENT TO AN INVENTOR CALLED LONGE.

1 PROFESSOR COCKBURN POINTED OUT THAT BECAUSE ROBINSON DID
2 NOT SHOW THE CURRENT CHARACTER STRING IN THE TEXT BOX, IT WAS
3 MISSING MANY OF THE ELEMENTS IN CLAIM 18 OF THE '172 PATENT.

4 AND THE GAPS COULD NOT BE FILLED BY XRGOMICS BECAUSE
5 XRGOMICS WASN'T EVEN A SPELLING CORRECTION PATENT. IT WAS A
6 PATENT FOR WORD EXTENSION. IT DOES NO CORRECTION.

7 ABSOLUTELY NO REASON WHY PERSONS OF ORDINARY SKILL WOULD
8 TRY TO COMBINE THOSE TWO PATENTS.

9 PROFESSOR WIGDOR ALSO COMPLETELY IGNORED THE ADDITIONAL
10 FACTORS THAT ARE RELEVANT TO OBVIOUSNESS. HE IGNORED THE FACT
11 THAT SAMSUNG HAD SOLD OVER 7.5 MILLION INFRINGING PHONES AS
12 EVIDENCE OF COMMERCIAL SUCCESS.

13 AND HE IGNORED THE INTERNAL SAMSUNG DOCUMENTS, SUCH AS
14 PLAINTIFF'S EXHIBIT 168, WHERE T-MOBILE REPORTED THAT THE
15 ALTERNATIVE THAT SAMSUNG WAS USING ON ITS DART PHONE HAD BEEN
16 TOO JARRING.

17 NOWHERE DID ANYONE EVER SUGGEST THAT THE APPLE PATENT AND
18 THE APPLE PATENTED FEATURE WAS OBVIOUS.

19 SO WHEN YOU GET TO QUESTION 8 ON THE VERDICT FORM, WE ASK
20 YOU TO CONCLUDE THAT THE PTO GOT IT RIGHT AND ANSWER NO AS TO
21 WHETHER SAMSUNG HAS PROVEN INVALIDITY OF THE '172 PATENT.

22 FINALLY, ON WILLFULNESS, WE KNOW, ONCE AGAIN, THAT SAMSUNG
23 CONTINUED TO USE THE FEATURE EVEN AFTER IT WAS AWARE OF THE
24 PATENT AND EVEN THOUGH IT HAD NO INFRINGEMENT DEFENSE. THAT IS
25 THE CLASSIC DEFINITION OF WILLFULNESS. SO YOU SHOULD ANSWER

1 QUESTION NUMBER 7 YES.

2 THE THIRD PATENT IS APPLE'S '647 PATENT, WHICH YOU HEARD
3 REFERRED TO AS QUICK LINKS OR ALSO DATA DETECTORS.

4 APPLE IS ASSERTING CLAIM 9 AGAINST NINE ACCUSED SAMSUNG
5 PHONES. AGAIN, YOU CAN SEE THEM HERE, BUT YOU WILL ALSO FIND
6 THEM IN EXHIBIT 222A AT PAGE 7.

7 WE CALLED DR. TODD MOWRY TO TESTIFY CONCERNING THIS
8 PATENT. DR. MOWRY LOOKED AT THE SOFTWARE CODE IN EVERY ACCUSED
9 PHONE AND HE WALKED YOU THROUGH EACH OF THE CLAIM LIMITATIONS
10 AGAINST REPRESENTATIVE SAMSUNG PHONES.

11 DR. MOWRY CAREFULLY TOOK YOU THROUGH THE SAMSUNG SOFTWARE
12 THAT CARRIES OUT EACH OF THE CLAIMED FUNCTIONS.

13 SAMSUNG CALLED DR. JEFFAY AND DR. JEFFAY CONCEDED THAT THE
14 PHONES THAT DR. MOWRY LOOKED AT WERE REPRESENTATIVE OF THE
15 ACCUSED PHONES, AND THAT MOST OF THE CLAIM ELEMENTS ARE PRESENT
16 IN THE ACCUSED PHONES.

17 DR. JEFFAY, AS YOU'LL REMEMBER BECAUSE WE HEARD IT AGAIN
18 YESTERDAY, ARGUED THAT THERE WAS NO INFRINGEMENT BECAUSE IN HIS
19 OPINION, AN ANALYZER SERVER, AS THE TERM IS USED IN THE CLAIM,
20 COULD NOT BE PROGRAMMED AS A SHARED LIBRARY.

21 BASICALLY DR. JEFFAY SAYS A SHARED -- A SERVER AND A
22 LIBRARY ARE DIFFERENT.

23 WE BROUGHT DR. MOWRY BACK IN REBUTTAL TO SHOW YOU THAT
24 THAT WAS WRONG.

25 WE SHOWED YOU THE TESTIMONY OF THE INVENTOR, DR. BONHURA.

1 WE SHOWED YOU THIS TESTIMONY.

2 BUT WE ALSO SHOWED YOU A 1996 APPLE -- 1996 APPLE INTERNAL
3 E-MAIL, WHICH IS DEFENDANT'S EXHIBIT DX 334, SHOWING THAT THE
4 APPLE INVENTORS HAD ACTUALLY BEEN CONSIDERING IMPLEMENTING THE
5 ANALYZER SERVER AS A SHARED LIBRARY, EXACTLY THE SAME
6 IMPLEMENTATION THAT SAMSUNG ENDED UP USING YEARS LATER IN ITS
7 INFRINGING PHONES.

8 AND THIS IS THE CRITICAL POINT: THERE WAS MORE THAN ONE
9 WAY THAT A SOFTWARE DESIGNER COULD IMPLEMENT AN ANALYZER
10 SERVER, MORE THAN ONE WAY TO DESIGN THE SOFTWARE.

11 APPLE CONSIDERED A SHARED LIBRARY. YOU CAN SEE THAT HERE.

12 SAMSUNG USES A SHARED LIBRARY.

13 THEY BOTH IMPLEMENT ANALYZER SERVERS.

14 BUT HERE YOU'LL SEE THAT APPLE'S INTERNAL DOCUMENTS ARE
15 COMPLETELY CONSISTENT WITH THE POSITION THAT WE'RE TAKING IN
16 THIS CASE.

17 YESTERDAY YOU'LL RECALL WE HAD TO COME BACK BECAUSE THE
18 JUDGE GAVE US ADDITIONAL DETAIL ABOUT THIS PATENT, TWO NEW
19 INSTRUCTIONS, AND SO THE EXPERTS CAME BACK TO TESTIFY ABOUT
20 THAT.

21 AND DR. JEFFAY CAME BACK AND HE CAME BACK TO RAISE TWO NEW
22 ISSUES. FIRST, HE CLAIMED THAT THE SHARED LIBRARY WAS NOT
23 SEPARATE FROM THE CLIENT APPLICATIONS, WHICH IS REQUIRED, A
24 SERVER ROUTINE SEPARATE FROM A CLIENT.

25 FRANKLY, THAT ARGUMENT IS A SHELL GAME. EVERYONE AGREES

1 THAT THIS CODE THAT WE'RE TALKING ABOUT IS CALLED A SHARED
2 LIBRARY. THAT'S WHY IT'S CALLED THAT. IT ISN'T PART OF ONE
3 APPLICATION. IT'S SHARED BY EVERY APPLICATION THAT NEEDS TO
4 USE IT.

5 AND AS DR. JEFFAY WAS FORCED TO CONCEDE ON
6 CROSS-EXAMINATION, THE SAME LIBRARY IS USED BY THE BROWSER
7 APPLICATION. IT IS ALSO USED BY THE MESSAGING APPLICATION. IT
8 IS USED BY OTHER APPLICATIONS.

9 IT IS NOT PART OF ANY ONE APPLICATION OR PART OF ANY ONE
10 CLIENT. IT IS SEPARATE AND AVAILABLE TO ALL OF THEM.

11 AS DR. MOWRY EXPLAINED WHEN HE ACTUALLY SHOWED YOU THE
12 CODE, IT IS STANDALONE CODE THAT SITS IN A SEPARATE PLACE IN
13 MEMORY.

14 DR. JEFFAY KEPT SAYING, WELL, IT CAN'T RUN BY ITSELF.

15 BUT, FIRST, YOU'RE NOT GOING TO FIND "RUN BY ITSELF" ANY
16 PLACE IN THIS CLAIM INSTRUCTION. THAT'S NOT PART OF THE ISSUE
17 HERE.

18 BUT SECOND, AS DR. MOWRY SAID, ALL SOFTWARE PROGRAMS WORK
19 TOGETHER. EVERYTHING WORKS WITH AN OPERATING SYSTEM. THESE
20 PROGRAMS DON'T RUN BY THEMSELVES. THAT'S NOT THE TEST.

21 THE TEST IS WHETHER OR NOT THIS CODE IS SEPARATE FROM THE
22 APPLICATION, AND BECAUSE IT IS A LIBRARY, A SHARED LIBRARY, IT
23 IS SEPARATE. IT IS USED BY ALL. IT IS PART OF NONE.

24 SECOND, ON LINKING ACTIONS TO THE DETECTED STRUCTURES,
25 ALTHOUGH DR. JEFFAY ADMITTED THAT THE CODE IN THE PHONES

1 CREATES THE REQUIRED SPECIFIED CONNECTION TO THE START
2 ACTIVITY, COMPUTER SUBROUTINE UNDER THE COURT'S LINKING ACTIONS
3 CONSTRUCTION, HE SAID THAT IT DIDN'T MEET THE CLAIM BECAUSE
4 START ACTIVITY DOESN'T DO ALL OF THE STEPS THAT ARE REQUIRED TO
5 MAKE A PHONE CALL OR SEND AN E-MAIL, WHATEVER ACTION THE USER
6 SELECTED.

7 BUT, AGAIN, LOOK AT THE CONSTRUCTION THAT THE COURT GAVE
8 YOU YESTERDAY FOR LINKING ACTIONS. IT DOESN'T REQUIRE THAT THE
9 LINKED COMPUTER SUBROUTINE DO EVERY STEP, JUST THAT IT PERFORM
10 A SEQUENCE OF OPERATIONS ON THE DETECTED STRUCTURE.

11 AND DR. -- PROFESSOR MOWRY WALKED YOU THROUGH THE CODE AND
12 SHOWED YOU THAT THE SHARED LIBRARY CODE PERFORMED THE
13 OPERATIONS FOR BOTH THE BROWSER AND THE MESSENGER APPLICATIONS.

14 WHEN YOU GET TO QUESTION 1, WHICH COVERS DIRECT
15 INFRINGEMENT OF THE '647 PATENT, WE ASK YOU TO SAY YES AS TO
16 BOTH SEA AND STA AND TO FIND SEA LIABLE FOR INDUCED AND
17 CONTRIBUTORY INFRINGEMENT FOR THE REASONS THAT WE HAVE
18 DISCUSSED.

19 AS TO VALIDITY ON THIS PATENT, WE HAD ANOTHER ONE OF THOSE
20 WEIRD MOMENTS. IN THE OPENING, IF YOU TOOK NOTES, YOU'LL
21 REMEMBER THAT SAMSUNG'S LAWYER SAID THAT A PRODUCT -- HE TALKED
22 ABOUT THIS PRODUCT AT GREAT LENGTH -- CALLED EMBEDDED BUTTONS
23 AND HE TALKED ABOUT HOW EMBEDDED BUTTONS HAD BEEN INVENTED AT
24 XEROX PARK AND HE PROMISED YOU THAT THEY WOULD SHOW YOU THAT
25 EMBEDDED BUTTONS INVALIDATED THE '647 PATENT.

1 BUT ONCE AGAIN, THERE TURNED OUT TO BE NO EVIDENCE TO
2 SUPPORT WHAT HE TOLD YOU. DR. JEFFAY MENTIONED EMBEDDED
3 BUTTONS, BUT HE DID NOT RELY ON IT TO ARGUE INVALIDITY.
4 YESTERDAY HE DIDN'T EVEN MENTION IT AT ALL WHEN HE WENT BACK TO
5 THE ISSUE OF VALIDITY.

6 INSTEAD, DR. JEFFAY RELIES ON A DIALLING SYSTEM CALLED
7 SIDEKICK, AND YOU WILL REMEMBER THAT.

8 BUT THERE WAS NO EVIDENCE AT ALL TO SUPPORT THE ARGUMENT
9 THAT SAMSUNG'S LAWYER TOLD YOU THAT THEY WERE GOING TO MAKE.

10 SO LET'S TALK ABOUT SIDEKICK. AS YOU HAVE SEEN, SIDEKICK
11 WAS A VERY PRIMITIVE DIALING SYSTEM. IT DETECTED ONLY A SINGLE
12 STRUCTURE, A SIMPLE PHONE NUMBER FORMAT, AND IT DID NOT OFFER A
13 MENU OF OPTIONS ONCE IT IDENTIFIED THAT STRUCTURE.

14 THOSE ARE THE VERY THINGS THAT MADE THE '647 INVENTION SO
15 HELPFUL. IT IDENTIFIED MULTIPLE STRUCTURES AND IT PROVIDED A
16 MENU OF OPTIONS.

17 SIDEKICK DOES NOT PRACTICE THE INVENTION AND IT CANNOT
18 PROVE THAT THIS PATENT IS INVALID.

19 YESTERDAY DR. JEFFAY WAS FORCED TO ADMIT THAT SIDEKICK --
20 THE FIRST TIME HE WAS HERE, DR. JEFFAY ADMITTED THAT SIDEKICK
21 DIDN'T HAVE THE POP-UP MENU, IT DIDN'T PROVIDE THE, THE
22 OPTIONS.

23 YESTERDAY HE WAS ALSO REQUIRED TO ADMIT THAT IT DIDN'T
24 HAVE THE LINKING ACTION THAT WAS REQUIRED BY THE COURT'S
25 ADDITIONAL CONSTRUCTION. YOU'D HAVE TO PUT ANOTHER X ON THIS

1 SLIDE FOR THE LINKING ACTION.

2 WHAT YOU HAVE HERE IS AN EXPERT TELLING YOU SIMPLY THAT
3 ALMOST ALL OF THE CLAIM REQUIREMENTS WOULD HAVE BEEN OBVIOUS,
4 EVEN THOUGH THERE IS NO EVIDENCE THAT ANYONE EVER CREATED THIS
5 INVENTION, THAT ANYONE EVER FILLED IN THE GAPS, THAT ANYONE
6 EVER CREATED WHAT IT WAS THAT MAKES THIS INVENTION VALUABLE.

7 HE SIMPLY WAVED HIS HANDS OVER IT AND HE SAID THIS WOULD
8 HAVE BEEN OBVIOUS.

9 THAT CANNOT BE CLEAR AND CONVINCING EVIDENCE. HOW CAN IT
10 BE OBVIOUS IF THE THOUSANDS OF PEOPLE WORKING IN THIS FIELD
11 NEVER THOUGHT OF IT UNTIL THE APPLE INVENTORS DID IT?

12 AND IN THIS CASE, THE ADDITIONAL FACTORS RELEVANT TO
13 OBVIOUSNESS ARE AGAIN HELPFUL. YOU SAW THAT SAMSUNG
14 INTENTIONALLY COPIED THIS FEATURE, WITH THE USEFUL POP-UP MENU,
15 DIRECTLY FROM THE IPHONE -- THAT'S IN PLAINTIFF'S EXHIBIT
16 146 -- AND THEY COPIED IT IN 2010.

17 WHY DO YOU HAVE TO COPY IT IN 2010 IF THE IDEA WAS OBVIOUS
18 ALL THOSE YEARS FROM THE SIDEKICK?

19 SO IN QUESTION NUMBER 8, WHEN YOU ARE ASKED IF SAMSUNG
20 PROVED THE PATENT INVALID, YOU SHOULD ANSWER NO.

21 ON THE ISSUE OF WILLFULNESS, WE KNOW THAT THE '647 PATENT
22 IS ONE OF THE PATENTS THAT WAS EXPRESSLY LISTED WHEN APPLE MET
23 WITH SAMSUNG IN AUGUST 2010 AND ASKED THEM TO STOP COPYING.

24 BUT WE KNOW THAT INSTEAD OF STOPPING, SAMSUNG SIMPLY -- WE
25 SAW THIS -- CUT AND PASTE THE APPLE INVENTOR'S ORIGINAL PAPER

1 INTO ITS 2011/2012 USER EXPERIENCE PLANNING DOCUMENT. THESE
2 ARE EXHIBITS 106 AND 107.

3 AND, FINALLY, WE KNOW THAT FROM THE TESTIMONY, AFTER APPLE
4 FILED THIS SUIT, GOOGLE CHANGED ITS OWN ANDROID CODE TO
5 ELIMINATE THE POP-UP MENU.

6 BUT WHEN THAT HAPPENED, SAMSUNG STOPPED USING THE GOOGLE
7 CODE AND IT WROTE ITS OWN CODE SO THAT ITS PHONES WOULD
8 CONTINUE TO COPY THE APPLE PRODUCTS DOWN TO THE SMALLEST
9 DETAIL. THAT IS WILLFUL INFRINGEMENT.

10 THE FOURTH PATENT IS THE '959 UNIVERSAL SEARCH PATENT.
11 APPLE IS ASSERTING CLAIM 25.

12 DR. SNOEREN SHOWED HOW EACH OF THE CLAIM ELEMENTS IS FOUND
13 ON THE ACCUSED SAMSUNG DEVICES.

14 AGAIN, SAMSUNG'S NON-INFRINGEMENT DEFENSE IS RELATIVELY
15 NARROW. SAMSUNG DOES NOT DENY THAT IT HAS UNIVERSAL SEARCH.
16 IT DOES NOT DENY THAT ITS PHONES SEARCH BOTH LOCALLY AND ON THE
17 INTERNET.

18 INSTEAD, DR. RINARD RAISED A VERY TECHNICAL ARGUMENT TO
19 TRY TO DEFEAT INFRINGEMENT. DR. RINARD ARGUED THAT THE GOOGLE
20 HEURISTIC ON THE SAMSUNG DEVICES DOES NOT SEARCH INFORMATION ON
21 THE INTERNET BECAUSE THERE IS ALSO A SEPARATE HEURISTIC ON
22 GOOGLE SERVERS THAT ALSO OPERATES ON GOOGLE INTERNET SEARCHES.
23 THAT WAS HIS ARGUMENT.

24 BUT AS DR. SNOEREN SHOWED YOU ON REBUTTAL, THAT'S NOT
25 REALLY A DEFENSE BECAUSE THE SAMSUNG PHONES LOCATE BOTH CURRENT

1 AND HISTORICAL INTERNET RESULTS. THE PHONE ITSELF STORES THE
2 USER'S INTERNET HISTORY, AND THAT IS SEARCHED AS PART OF THE
3 UNIVERSAL SEARCH FEATURE.

4 IRONICALLY, DR. SNOEREN WAS ABLE TO USE THIS DRAWING FROM
5 THE GOOGLE ENGINEER, BJORN BRINGERT, TO PROVE THIS POINT. THE
6 DRAWING SHOWS CLEARLY THAT THE PHONE ITSELF SEARCHES FOR
7 INFORMATION ON THE INTERNET.

8 BECAUSE THE SAMSUNG DEVICES ARE COVERED BY THE CLAIM
9 LANGUAGE, WE ASK THAT YOU ANSWER YES TO QUESTION NUMBER 2
10 CONCERNING THE '959 PATENT.

11 BUT THERE'S ONE ADDITIONAL POINT HERE. UNDER THE '959
12 PATENT, THE ACCUSED DEVICES INCLUDE BOTH PHONES AND TABLETS.

13 SO IN THIS CASE, ALL THREE COMPANIES ARE DIRECT
14 INFRINGERS. SEC SELLS PHONES AND TABLETS; SEA SELLS TABLETS;
15 AND STA SELLS PHONES.

16 QUESTIONS 5 AND 6 ON THE VERDICT FORM ABOUT CONTRIBUTORY
17 INDUCEMENT CONTINUE TO BE THE SAME ANALYSIS BECAUSE IT IS SEC
18 THAT INDUCES BOTH SEA AND STA TO INFRINGE AND IT IS SEC THAT
19 CONTRIBUTES TO THEIR INFRINGEMENT.

20 WITH REGARD TO VALIDITY, SAMSUNG PRESENTED TWO ARGUMENTS.
21 THE FIRST WAS BASED ON THE SOFTWARE PROGRAM CALLED FREEWAIS SF.

22 THE SECOND WAS BASED ON A COMBINATION OF TWO PATENTS
23 CALLED SMITH AND SHOHAM.

24 LET ME DEAL WITH FREEWAIS SF FIRST. I'M SURE THAT THIS
25 WAS PRETTY COMPLICATED WHEN THE EVIDENCE WAS GOING IN.

1 IN ORDER TO UNDERSTAND WHAT SAMSUNG WAS TRYING TO DO, YOU
2 HAVE TO LOOK AT THE INSTRUCTIONS. AS YOU WILL SEE FROM
3 INSTRUCTION NUMBER 32, WHICH DEALS WITH ANTICIPATION, YOU ARE
4 SUPPOSED TO CONSIDER ONLY EVIDENCE THAT MEETS THE LEGAL
5 DEFINITION OF PRIOR ART.

6 AND IN THIS CASE, IN ORDER TO BE PRIOR ART, THE ART HAD TO
7 BE PUBLICLY KNOWN OR PUBLICLY USED BY OTHERS IN THE
8 UNITED STATES BEFORE THE APPLE INVENTORS CONCEIVED OF THE
9 INVENTION.

10 SO THE '959 PATENT WAS FILED, YOU'LL SEE ON THE FACE, IN
11 JANUARY OF 2000. SO IN ORDER FOR FREEWAIS SF TO BE PRIOR ART,
12 IT HAD TO HAVE BEEN KNOWN OR USED IN THE U.S. AT LEAST BEFORE
13 2000.

14 SAMSUNG -- ONE OF SAMSUNG'S PROBLEMS IS THAT THERE IS NO
15 EVIDENCE THAT ANYONE HAD EVER USED THE FREEWAIS SF PROGRAM TO
16 SEARCH LOCALLY AND ON THE INTERNET IN THE UNITED STATES BEFORE
17 THE YEAR 2000.

18 I USE THREE CARD MONTE, I USE THE SHELL GAME.

19 SAMSUNG PUT IN A BUNCH OF EVIDENCE ABOUT A U.S. COMPANY
20 CALLED WAIS, W-A-I-S, THEY EVEN BROUGHT A WITNESS TO TALK ABOUT
21 THE WAIS COMPANY, AND THE WAIS COMPANY, AN AMERICAN COMPANY,
22 MADE SOFTWARE.

23 THAT IS NOT THE SOFTWARE THAT DR. RINARD RELIED UPON. THE
24 AMERICAN WAIS SOFTWARE IS NOT PART OF THEIR INVALIDITY. IT'S
25 SIMPLY IN THIS CASE TO CONFUSE THIS ISSUE OF WHAT WAS IN

1 AMERICA AND WHAT WASN'T IN AMERICA.

2 THE SOFTWARE THEY'RE RELYING ON IS CALLED FREEWAIS SF, AND
3 AS YOU WILL RECALL, SAMSUNG BROUGHT THE SOURCE CODE OVER FOR
4 FREEWAIS SF OVER FROM GERMANY LAST YEAR AND PAID DR. RINARD TO
5 SET UP HIS OWN COMPUTER SYSTEM USING OUR PATENT AS A ROADMAP.

6 WHAT THEY WANTED TO ARGUE TO YOU WAS THAT YOU COULD ASSUME
7 THAT BECAUSE DR. RINARD WAS ABLE TO DO IT LAST YEAR, SOMEONE
8 ELSE MUST HAVE DONE THIS MORE THAN 15 YEARS AGO.

9 BUT THERE IS NO EVIDENCE THAT ANYONE HAD DONE IT BEFORE
10 DR. RINARD USED OUR PATENT AS A ROADMAP. THERE'S CERTAINLY NOT
11 CLEAR AND CONVINCING EVIDENCE.

12 SO SAMSUNG HAS LOTS OF PROBLEMS HERE. FIRST OF ALL, THE
13 PATENT CLAIMS A COMPUTER READABLE MEDIUM.

14 SOURCE CODE, WHICH THEY BROUGHT OVER FROM GERMANY -- THIS
15 IS WHY YOU HEARD THIS TESTIMONY -- SOURCE CODE IS NOT COMPUTER
16 READABLE. PEOPLE READ IT. MACHINES DON'T. SO SOURCE CODE
17 CANNOT BE PRIOR ART TO THIS PATENT.

18 YOU MAY REMEMBER THAT DR. RINARD TESTIFIED THAT ONE OF THE
19 THINGS HE HAD TO DO, HE USED THE WORD "COMPILE," HE HAD TO
20 COMPILE THE SOURCE CODE HE GOT FROM GERMANY. COMPILING IS THE
21 STEP THAT TURNS SOURCE CODE, WHICH PEOPLE CAN READ, INTO
22 COMPUTER -- INTO A COMPUTER READABLE MEDIUM.

23 SAMSUNG KNEW THIS WAS A PROBLEM, SO IT BROUGHT DR. RINARD
24 BACK, HE WAS THEIR LAST WITNESS BEFORE YESTERDAY, SO LAST
25 FRIDAY, THEY BROUGHT HIM BACK TO TRY A LITTLE BIT MORE OF THIS

1 THREE CARD MONTE.

2 THIS TIME, DR. RINARD TESTIFIED THAT WHAT HE -- HE WASN'T
3 RELYING ON THE SOFTWARE, THE SOURCE CODE, HE WAS RELYING ON THE
4 DISK, BECAUSE THE DISK IS A COMPUTER READABLE MEDIUM, AND SO HE
5 SAID "NOW I'M RELYING ON THE DISK AND NOT THE SOURCE CODE."

6 BUT THAT PUTS SAMSUNG BACK WHERE IT STARTED, BECAUSE THE
7 DISK THAT'S IN EVIDENCE GOT HERE ONLY LAST YEAR FROM GERMANY.
8 IT WAS NOT IN THE UNITED STATES BEFORE THE YEAR 2000. THE DISK
9 CANNOT BE PRIOR ART.

10 SO TO PUT IT SIMPLY, WE DON'T THINK YOU CAN FIND CLEAR AND
11 CONVINCING EVIDENCE THAT FREEWAIS SF, THE GERMAN PROGRAM, WAS
12 EVER USED IN THE UNITED STATES FOR AN INTERNET SEARCH BEFORE
13 JANUARY OF 2000.

14 BUT THEN SAMSUNG HAS AN EVEN BIGGER PROBLEM. WHEN IT GOT
15 THE SOURCE CODE LAST YEAR, EVEN THOUGH IT WAS USING OUR PATENT
16 AS A ROADMAP, IT FOUND OUT THAT INSTALLING FREEWAIS SF ON A
17 SINGLE COMPUTER DOES NOT MEET CLAIM 25. THERE IS ONLY ONE SET
18 OF HEURISTICS, YOU'LL REMEMBER YOU NEED TWO, AND THERE IS NO
19 INTERNET SEARCH -- YOU NEED THREE.

20 SO DR. RINARD HAD TO SET IT UP ON TWO SEPARATE COMPUTERS,
21 ONE TO SEARCH LOCALLY AND THE OTHER TO SEARCH THE INTERNET.

22 BUT THEN THE CODE HE POINTED TO ON THE INTERNET HEURISTIC
23 WAS ON THE WRONG PLACE. IT'S ON THE SECOND COMPUTER.

24 SO AFTER ALL THAT WORK THAT HE DID, WHAT DR. RINARD ENDED
25 UP PROVING WAS EXACTLY HOW COOL APPLE'S INVENTION IS. IT

1 PERMITS UNIVERSAL SEARCH, LOCAL AND INTERNET, USING THE SAME
2 DEVICE. NO ONE HAD EVER DONE THAT BEFORE APPLE CREATED ITS
3 PATENT.

4 DR. RINARD ALSO MENTIONED THOSE OTHER TWO PATENTS, SMITH
5 AND SHOHAM. HE LITERALLY JUST MENTIONED THEM. HE NEVER TRIED
6 TO MATCH THE CLAIMS OF THE APPLE PATENT TO THE TECHNOLOGY OF
7 THOSE TWO PATENTS.

8 WITH RESPECT TO UNIVERSAL SEARCH, THE OTHER FACTORS ARE
9 ALSO SIGNIFICANT. YOU HEARD ABOUT THIS IN THE TESTIMONY. THIS
10 IS THE PATENT THAT SAMSUNG SAYS IT TEMPORARILY TOOK OUT OF ITS
11 PHONES BECAUSE OF THIS CASE.

12 BUT WHAT IT -- BUT WHICH IT RUSHED TO PUT BACK IN AT THE
13 FIRST POSSIBLE MOMENT BECAUSE ITS CUSTOMERS DEMANDED IT.

14 THIS IS SIGNIFICANT EVIDENCE OF PUBLIC ACCLAIM, AND ALSO
15 OF SAMSUNG'S WILLFUL INFRINGEMENT.

16 AT THE END OF THE DAY, THIS IS ANOTHER CASE WHERE THE
17 PATENT AND TRADEMARK OFFICE PERFORMED A THOROUGH EXAMINATION
18 AND CONCLUDED THAT THIS PATENT WAS VALID. DR. RINARD NEVER
19 TOLD YOU THAT THE ART HE TESTIFIED ABOUT WAS MORE RELEVANT THAN
20 WHAT THE EXAMINER CONSIDERED. THERE IS NO COMPELLING OR CLEAR
21 AND CONVINCING EVIDENCE THAT WOULD JUSTIFY OVERTURNING THE PTO
22 DECISION.

23 ARE WE HAVING FUN?

24 (LAUGHTER.)

25 MR. MCELHINNY: FINALLY, THERE IS THE '414 -- I'M

1 SORRY TO MARCH YOU THROUGH ALL THIS, BUT IT'S THE ONLY WAY I
2 CAN THINK OF TO ACTUALLY HELP YOU DO IT, SO THIS IS THE WAY
3 WE'VE GOT TO DO IT. I DON'T WANT YOU TO BE IN THERE AND SAY,
4 WHAT?

5 SO HERE WE GO.

6 FINALLY, THERE'S THE '414 BACKGROUND SYNC PATENT. WE HAVE
7 ACCUSED TEN SAMSUNG DEVICES.

8 ONCE AGAIN, DR. SNOEREN, USING SAMSUNG SOURCE CODE,
9 DEMONSTRATED THAT EVERY ELEMENT OF THE CLAIM IS FOUND IN EVERY
10 ACCUSED DEVICE.

11 SAMSUNG BROUGHT IN DR. CHASE TO RAISE A TECHNICAL DEFENSE.
12 YOU MAY REMEMBER THAT DR. CHASE TESTIFIED THAT EVEN THOUGH THE
13 SAMSUNG PHONES HAVE SIX SYNC ADAPTERS, IN HIS OPINION, FOUR OF
14 THOSE SIX SYNC ADAPTERS WERE NOT KEY -- THE CLAIM LANGUAGE IS
15 CONFIGURED TO SYNCHRONIZE BECAUSE THEY DID NOT CARRY OUT EVERY
16 STEP OF THE SYNCHRONIZATION THEMSELVES, BUT SIMPLY STARTED THE
17 PROCESS.

18 SAME ARGUMENT WE HEARD BEFORE. IT DOESN'T DO THE WHOLE
19 THING, IT ONLY STARTS THE PROCESS, THEREFORE, IT DOESN'T COUNT.

20 ON REBUTTAL, DR. SNOEREN CAME BACK AND SHOWED YOU THE
21 SOURCE CODE WHERE THE SYNC ADAPTERS PERFORMED A ROUTINE WHICH
22 WAS CALLED ON PERFORM SYNC.

23 AND THEN HE SHOWED YOU TWO GOOGLE DOCUMENTS THAT PROVED
24 THAT IT IS DR. SNOEREN WHO WAS CORRECT ON THIS ISSUE. WE
25 SHOWED YOU PLAINTIFF'S EXHIBIT 172, WHICH SAYS THAT THE SYNC

1 ADAPTER HANDLES ALL OF THE SYNC PROTOCOL LOGIC.

2 AND WE SHOWED YOU PLAINTIFF'S EXHIBIT 102 -- THE FIRST ONE
3 WAS 172, THIS ONE IS 102 -- AND THIS DOCUMENT DESCRIBES HOW THE
4 SYNC ADAPTER IS A FEATURE THAT PROVIDES THE NECESSARY THREAD.
5 BASED ON THIS EVIDENCE AND DR. SNOEREN'S TESTIMONY, WE BELIEVE
6 WE HAVE PROVEN INFRINGEMENT.

7 AGAIN, IN THIS CASE, BECAUSE THE ACCUSED DEVICES ARE BOTH
8 TABLETS AND PHONES, IT IS ALL THREE SAMSUNG ENTITIES THAT
9 INFRINGE.

10 TO TRY TO PROVE THAT THIS PATENT IS INVALID, SAMSUNG
11 PRESENTED TWO PIECES OF PRIOR ART. THE FIRST WAS A PROGRAM
12 CALLED WINDOWS MOBILE. BUT AS DR. SNOEREN EXPLAINED, WINDOWS
13 MOBILE DOESN'T HAVE THE SYNC COMPONENTS THAT ARE SPECIFIC TO
14 THREE DIFFERENT DATA CLASSES AND THAT CREATE THEIR OWN THREADS.

15 INSTEAD, E-MAIL, CALENDAR, AND CONTACTS WERE ALL SYNCED ON
16 THE SAME THREAD, SLOWING THINGS DOWN FOR THE USER.

17 WINDOWS MOBILE IS JUST ANOTHER EXAMPLE OF WHAT THE WORLD
18 WAS LIKE BEFORE THE '414 PATENT WAS INVENTED.

19 THE SECOND PIECE OF ART WAS A COMPUTER PROGRAM CALLED
20 EVOLUTION. BUT AS DR. SNOEREN EXPLAINED, FOR E-MAIL, EVOLUTION
21 WORKED ON SOMETHING CALLED A SUMMARY TABLE. IT DID NOT HAVE
22 THE DATABASE THAT WAS REQUIRED BY THE CLAIM.

23 SO, AGAIN, WE THINK THAT SAMSUNG HAS FAILED TO PROVE
24 INVALIDITY.

25 TO CONFIRM THAT, AGAIN, YOU LOOK AT THE OTHER FACTORS.

1 AND THEN HERE I THOUGHT THE -- SAMSUNG PUT THIS EVIDENCE IN,
2 AND I WONDERED, WHY WERE THEY DOING IT? IT'S SO CLEAR TO ME.

3 YOU MAY REMEMBER THAT SAMSUNG SHOWED YOU THIS SLIDE. THIS
4 WAS SLIDE 83. IT WAS A SAMSUNG EXHIBIT 327. IT SHOWED HERE
5 THE 2006 GOOGLE DOCUMENT THAT DESCRIBED BACKGROUND SYNC AS A
6 FEATURE, IN 2006, THAT GOOGLE HOPED TO HAVE IN THE SOFTWARE
7 THAT THEY WERE PLANNING TO WRITE.

8 THIS IS EXACTLY WHAT YOUR JURY INSTRUCTIONS CALLED
9 LONG-FELT NEED. GOOGLE WANTED THE FEATURE IN 2006, BUT THEY
10 DIDN'T KNOW HOW TO DO IT.

11 IN FACT, THE EVIDENCE IS THAT THEY WEREN'T ABLE TO GET IT
12 INTO THEIR OWN SOFTWARE UNTIL TWO YEARS LATER IN 2008.

13 HOW COULD IT TAKE THE PEOPLE AT GOOGLE TWO YEARS IF THE
14 INVENTION WAS OBVIOUS?

15 SAMSUNG'S INFRINGEMENT WAS WILLFUL BECAUSE IT HAD KNOWN OF
16 THE PATENT, BUT IT MADE NO EFFORT WHATSOEVER TO REMOVE THE
17 FEATURES FROM THE PHONES.

18 SO THAT CONCLUDES WHAT THE LAW REFERS TO AS THE LIABILITY
19 ISSUES. BY THIS TIME, YOU WILL HAVE FINISHED QUESTIONS 1
20 THROUGH 8 IN THE VERDICT FORM. YOU WILL HAVE DECIDED WHETHER
21 OR NOT ANY OF THE SAMSUNG COMPANIES IS LIABLE FOR PATENT
22 INFRINGEMENT.

23 AND IF YOU FIND ANY OF THEM LIABLE, IF YOU FIND THAT AN
24 APPLE PATENT IS VALID AND INFRINGED, YOU WILL MOVE ON TO THE
25 ISSUE OF DAMAGES.

1 BUT BEFORE I GO THERE, I WANT TO MENTION TWO THINGS THAT
2 YOU WILL NOT FIND IN THE JURY INSTRUCTIONS. THEY ARE NOT IN
3 THE INSTRUCTIONS BECAUSE THEY ARE SIMPLY EFFORTS TO MISDIRECT.

4 THE FIRST IS THE QUESTION OF WHETHER OR NOT APPLE USES ANY
5 OF THE PARTICULAR CLAIMS OF THE PATENT, OR THE PATENTS, IN ITS
6 PRODUCTS. YOU WON'T FIND THAT ANYWHERE IN THE VERDICT FORM.
7 IT'S NOT RELEVANT TO INFRINGEMENT OR VALIDITY.

8 THE ISSUE IN THIS CASE IS SAMSUNG'S CONDUCT, AND IT IS
9 SAMSUNG THAT NEEDS TO CONVINCE YOU THAT THE INVENTIONS IT HAS
10 TAKEN, THE INVENTIONS IT HAS COPIED, THE INVENTIONS IT HAS PUT
11 IN TENS OF MILLIONS OF INFRINGING PRODUCTS, THE INVENTIONS IT
12 HAS REFUSED TO STOP USING, HAVE NO VALUE.

13 THE SECOND ISSUE IS THE GOOGLE ISSUE. AGAIN, IN HIS
14 OPENING, LAWYER -- SAMSUNG'S LAWYER SAID THIS CASE WOULD BE
15 ABOUT APPLE -- REMEMBER, HE USED THE PHRASE, EVERYONE WENT,
16 (GASP) APPLE'S WAR ON GOOGLE.

17 BUT AS YOU HAVE NOW SEEN, THERE IS NO SUCH WAR ON APPLE'S
18 PART. YOU SAW AN E-MAIL THAT USED THOSE WORDS, JUST A SNIPPET.
19 I BET A DOLLAR THAT YOU'LL SEE IT AGAIN THIS MORNING.

20 BUT THE EXHIBIT IS DX 489. WHEN YOU LOOK AT THE EXHIBIT,
21 YOU WILL SEE THAT IT TALKS ABOUT A COMPETITIVE WAR, MAKING
22 BETTER PRODUCTS, MAKING THE RETAIL EXPERIENCE BETTER, GETTING
23 MORE SALES.

24 SO MUCH FOR THE CONCEPT OF A HOLY WAR.

25 BUT WHAT WE DO NOW KNOW IS THAT SAMSUNG AND GOOGLE HAVE

1 WORKED OUT THEIR ISSUES CONCERNING PATENT INFRINGEMENT AMONGST
2 THEMSELVES. SAMSUNG'S LAWYERS ARE PAID BY BOTH SAMSUNG AND
3 GOOGLE. GOOGLE IS HELPING TO DEFEND THE '959 AND '414 PATENTS,
4 BUT ONLY THOSE TWO. NOT ALL FIVE AS SAMSUNG'S COUNSEL MAY HAVE
5 SUGGESTED.

6 MR. PRICE: I OBJECT. THAT'S IMPROPER ARGUMENT BASED
7 ON --

8 THE COURT: OVERRULED. PLEASE SIT DOWN.

9 MR. MCELHINNY: AT THE END OF THE DAY, GOOGLE SHOULD
10 NOT BE AN ISSUE FOR YOU. YOU WILL NOT FIND IT ANY PLACE IN
11 YOUR INSTRUCTIONS.

12 SAMSUNG MAKES, USES, AND SELLS. THERE WAS NO CLAIM THAT
13 GOOGLE INVENTED ANY OF THESE FEATURES BEFORE APPLE DID. NO
14 SAMSUNG EXPERT CAME IN HERE AND SAID "I'M RELYING ON GOOGLE'S
15 WORK AS PRIOR ART." SO GOOGLE IS IRRELEVANT TO VALIDITY.

16 YOU SHOULD REACH YOUR JUDGMENT BASED ON THE EVIDENCE.
17 GOOGLE'S AND SAMSUNG'S SECRET INDEMNITY AGREEMENTS WILL TAKE
18 CARE OF THEMSELVES.

19 IF THIS GOOGLE ISSUE HAS ANY RELEVANCE AT ALL, IT IS
20 RELEVANT TO CREDIBILITY. SAMSUNG'S LAWYER GOT UP AT THE
21 BEGINNING AND POINTED THE FINGER AT GOOGLE. HE DIDN'T MENTION
22 THAT GOOGLE IS HELPING TO PAY HIS FEES.

23 WHEN SAMSUNG PRESENTED GOOGLE WITNESSES AS DISINTERESTED
24 THIRD PARTIES, THEY DID NOT MENTION THAT GOOGLE HAD AGREED IN A
25 CONTRACT TO HELP DEFEND THIS CASE.

1 WE HAD TO BRING THAT AGREEMENT TO YOUR ATTENTION.

2 BUT THEN, AS YOU SAW, WHEN WE ASKED SAMSUNG, IN
3 SEPTEMBER 2012, IF THEY HAD SOUGHT INDEMNITY, THEY LIED TO US,
4 AND THEY LIED TO US UNDER OATH.

5 IF IT STRIKES YOU THAT PARTIES THAT LIE UNDER OATH CANNOT
6 BE TRUSTED, YOU WILL FIND THAT COMMON SENSE THOUGHT EXPRESSLY
7 SPELLED OUT FOR YOU IN JURY INSTRUCTION NUMBER 12.

8 SO NOW I'D LIKE TO TURN TO DAMAGES. THIS IS THE HEART OF
9 THIS CASE.

10 MAKE NO MISTAKE ABOUT IT. THERE ARE TWO WAYS THAT SAMSUNG
11 CAN WIN THIS CASE. OBVIOUSLY THEY WIN THE CASE IF YOU DECIDE
12 THAT THEY DO NOT INFRINGE OR IF YOU DECIDE THAT OUR PATENTS ARE
13 NOT VALID. IF THAT'S WHAT YOU DECIDE, SAMSUNG WILL WIN, AND IN
14 THAT CASE THEY DESERVE TO WIN.

15 BUT SAMSUNG WINS EVEN IF YOU DO FIND INFRINGEMENT IF YOU
16 AWARD DAMAGES AT A LEVEL THAT ENDS UP REWARDING SAMSUNG'S
17 BUSINESS STRATEGY.

18 IF SAMSUNG CAN COPY APPLE'S PRODUCTS, SELL INFRINGING
19 PRODUCTS, AND INCREASE ITS MARKET SHARE AND END UP PAYING ONLY
20 A SMALL FINE, ITS STRATEGY WILL HAVE BEEN SUCCESSFUL AND,
21 WHATEVER YOU INTENDED, SAMSUNG WILL END UP AS A BIG WINNER.

22 THIS IS EXACTLY SAMSUNG'S STRATEGY. THAT IS WHY ITS
23 WITNESSES CALL SOFTWARE FEATURES TRIVIAL, EVEN THOUGH ITS
24 INTERNAL DOCUMENTS CALL THEM CRITICAL.

25 IT'S WHY SAMSUNG'S WITNESSES HAVE TESTIFIED THAT THE

1 PATENTS ARE EASY TO DESIGN AROUND, EVEN THOUGH SAMSUNG'S
2 BEHAVIOR SHOWS THAT THEY RESISTED, AND IN MANY CASES, HAVE
3 REFUSED TO CHANGE TO SO-CALLED NON-INFRINGEMENT ALTERNATIVES.

4 AND THAT IS WHY SAMSUNG'S POSITION IS THAT APPLE HAS LOST
5 NO LOST PROFITS AND THAT, IN A NEGOTIATION, APPLE WOULD LICENSE
6 ITS PATENTS FOR PENNIES ON THE DOLLAR.

7 EVERY ONE OF THOSE ARGUMENTS IS AN ARGUMENT AIMED AT
8 CONVINCING YOU TO LOWER THEIR DAMAGES.

9 SO LET'S SEE WHAT THE COURT'S INSTRUCTIONS SAY ABOUT
10 DAMAGES. YOU WILL FIND THAT THERE ARE TWO POSSIBLE MEASURES OF
11 DAMAGES, I TOLD YOU THIS AT THE BEGINNING, LOST PROFITS AND A
12 REASONABLE ROYALTY.

13 AT A MINIMUM, IF YOU FIND INFRINGEMENT, WE ARE ENTITLED TO
14 A REASONABLE ROYALTY. WE RECOVER LOST PROFITS ONLY IF WE HAVE
15 PROVED THEM.

16 SO LET'S LOOK FIRST AT LOST PROFITS. THE TEST IS EASILY
17 STATED: APPLE IS ENTITLED TO LOST PROFITS IF WE PROVE THAT
18 THERE WAS A REASONABLE PROBABILITY THAT APPLE WOULD HAVE MADE
19 MORE SALES IF THE INFRINGING PRODUCTS HAD NOT BEEN ON THE
20 MARKET.

21 LET ME STATE THAT AGAIN. IF YOU FIND THAT ANY SAMSUNG
22 PHONE INFRINGES, YOU ASK, WHAT WOULD HAVE HAPPENED IN THE
23 MARKETPLACE IF SAMSUNG HAD TO TAKE THAT PHONE OFF THE
24 MARKETPLACE ENTIRELY SO THAT THE FEATURES COULD BE REDESIGNED?
25 IN THAT TIME THAT IT WAS OFF THE MARKET, WOULD APPLE HAVE MADE

1 SOME OF THOSE SALES?

2 IN INSTRUCTION NUMBER 37, THE COURT WILL GIVE YOU FOUR
3 FACTORS THAT APPLE MUST PROVE.

4 FIRST, THAT THERE WAS DEMAND FOR THE PATENTED PRODUCT.

5 TWO, THAT THERE WERE NO ACCEPTABLE NON-INFRINGEMENT
6 ALTERNATIVES AVAILABLE, OR EVEN IF THERE WERE, THE NUMBER OF
7 SALES THAT WOULD BE MADE DESPITE THE NON-INFRINGEMENT
8 ALTERNATIVES.

9 THREE, THAT APPLE HAD THE CAPACITY TO MANUFACTURE AND
10 MARKET THE ADDITIONAL PHONES.

11 AND NOW YOU'RE SEEING WHY SOME OF THESE WITNESSES CAME TO
12 TESTIFY.

13 AND, FOUR, THE AMOUNT OF PROFIT THAT APPLE WOULD HAVE MADE
14 IN ITS LOST SALES.

15 LET'S LOOK AT THESE FACTORS A LITTLE MORE.

16 WAS THERE DEMAND IN THE MARKETPLACE? WE KNOW THERE WAS.
17 WE KNOW THERE WAS DEMAND FOR THE APPLE PRODUCTS THAT PRACTICED
18 THE SLIDE TO UNLOCK AND DATA DETECTOR PATENTS BECAUSE YOU HAVE
19 SEEN THE SALES NUMBERS.

20 YOU ALSO SAW, I'M NOT GOING TO WASTE YOUR TIME WITH IT
21 RIGHT NOW, BUT THEY'RE IN EVIDENCE, THE DOZENS AND DOZENS OF
22 ARTICLES PRAISING APPLE'S PRODUCTS.

23 WE ALSO KNOW THAT THERE WAS DEMAND FOR THE SAMSUNG
24 PRODUCTS THAT INFRINGED THE PATENTS BECAUSE WE ALSO SAW THE
25 SAMSUNG SALES FIGURES AND HOW THEY SKYROCKETED WHEN SAMSUNG

1 STARTED TO SELL PHONES THAT INCORPORATED APPLE'S INFRINGING --
2 APPLE'S PATENTED FEATURES.

3 FINALLY, WE SAW FROM SAMSUNG'S INTERNAL DOCUMENT, WHICH IS
4 EXHIBIT 156, THE AMERICAN PHONE MARKET WAS A TWO HORSE RACE.
5 IF A SALE DIDN'T GO TO SAMSUNG, IT WAS MOST LIKELY GOING TO GO
6 TO APPLE.

7 THERE WAS CLEARLY DEMAND FOR THE PRODUCTS.

8 THE SECOND FACTOR INVOLVES WHAT THE LAW CALLS ACCEPTABLE
9 NON-INFRINGING ALTERNATIVES. WERE THERE OTHER WAYS TO
10 ACCOMPLISH THE SAME RESULTS THAT WOULD HAVE BEEN ACCEPTABLE TO
11 A CONSUMER, BUT THAT DID NOT INFRINGE APPLE'S PATENTS?

12 THE INSTRUCTION, NUMBER 37, SAYS WE CAN GET LOST PROFITS
13 EITHER IF WE PROVE THERE WERE NO ACCEPTABLE NON-INFRINGING
14 ALTERNATIVES, OR EVEN IF THERE WERE ALTERNATIVES AVAILABLE,
15 THEN WE COULD HAVE MADE ADDITIONAL SALES IN THE CASE.

16 DR. VELLTURO ADDRESSED BOTH SITUATIONS. HE FOUND LOST
17 PROFITS WHERE THERE WERE NO NON-INFRINGING ALTERNATIVES
18 AVAILABLE. THIS IS WHAT HE CALLED THE OFF THE MARKET LOST
19 PROFITS. THE PRODUCT ITSELF WOULD HAVE BEEN OFF THE MARKET
20 DURING THE TIME SAMSUNG WAS SEARCHING FOR A NON-INFRINGING
21 ALTERNATIVE THAT WAS ACCEPTABLE TO USERS AND CARRIERS.

22 AND THEN DR. VELLTURO FOUND A SMALLER NUMBER OF LOST
23 PROFITS AFTER SOME HYPOTHETICAL REDESIGN PRODUCT CAME BACK ON
24 THE MARKET BECAUSE THE HYPOTHETICAL ALTERNATIVES WOULD NOT HAVE
25 BEEN EQUALLY ATTRACTIVE TO USERS AND CARRIERS.

1 THE FIRST QUESTION IS, HOW LONG WOULD THE SAMSUNG PHONES
2 BE OFF THE MARKET WHILE THEY WERE BEING REDESIGNED?

3 WE ARE ONLY SEEKING OFF THE MARKET LOST PROFITS FOR THREE
4 PATENTS, THE '647, THE '721, AND THE '172 AND, BASED ON THE
5 TESTIMONY OF OUR EXPERT, DR. VELLTURO, ONLY FOR A FOUR MONTH
6 PERIOD. WE THINK THAT'S PRETTY CONSERVATIVE.

7 FOR THE QUICK LINKS PATENT, WE KNOW THAT SAMSUNG HAS NEVER
8 BEEN ABLE TO DESIGN AROUND IT. THEY STILL USE IT TO THIS DAY.

9 USING A HYPOTHETICAL FOUR MONTH PERIOD IS EXTREMELY
10 FAVORABLE TO THEM.

11 FOR THE SLIDE TO UNLOCK AND WORD CORRECTION PATENTS, BASED
12 ON DR. COCKBURN'S TESTIMONY, IT WOULD TAKE MONTHS TO DESIGN A
13 NEW INTERFACE, TO TEST IT, AND TO GET CARRIER APPROVAL.

14 SAMSUNG HAS TOLD YOU THAT IT WOULD ONLY TAKE TWO HOURS,
15 BUT THEY PRODUCED NO DOCUMENTS THAT SHOW THE NORMAL DESIGN --
16 HOW LONG THE NORMAL DESIGN PROCESS TAKES.

17 THERE REALLY IS NO EVIDENCE IN THE RECORD THAT SUPPORTS
18 ANY PERIOD SHORTER THAN FOUR MONTHS. IT'S ALL WHAT I CALLED AT
19 THE BEGINNING WOULD, SHOULD, COULD.

20 DURING THE OFF THE MARKET PERIOD, SAMSUNG SOLD MILLIONS OF
21 INFRINGING PHONES.

22 DR. VELLTURO CALCULATED THAT ONLY A FRACTION OF THOSE
23 SALES WOULD HAVE GONE TO APPLE IF THE SAMSUNG PHONES HAD BEEN
24 OFF THE MARKET -- I CAN'T SAY THE NUMBER OUT LOUD, BUT YOU CAN
25 SEE THE NUMBER OF UNITS ON THE SCREEN IN RED -- AND THAT APPLE

1 LOST THOSE PROFITS. THAT RESULTS IN OFF THE MARKET LOST
2 PROFITS OF ABOUT \$507 MILLION.

3 THE SECOND ELEMENT OF THE NON-INFRINGEMENT ALTERNATIVE
4 FACTOR IS WHETHER OR NOT CONSUMERS WOULD HAVE BEEN DISAPPOINTED
5 WITH THE HYPOTHETICAL NON-INFRINGEMENT DESIGN THAT WOULD HAVE
6 REPLACED THE PATENTED FEATURES.

7 AGAIN, ALL THE EVIDENCE TELLS US THAT THEY WOULD BE.

8 FIRST, WE HAD THE REAL WORLD EVIDENCE. WE KNOW THAT
9 EVENTUALLY SAMSUNG REMOVED THE SLIDE TO UNLOCK AND AUTO CORRECT
10 FEATURES, SO WE GAVE THEM FULL CREDIT FOR THAT AND WE ARE NOT
11 SEEKING DIMINISHED DEMAND LOST PROFITS FOR THOSE TWO PATENTS.

12 BUT FOR THE REMAINING THREE, WE KNOW THAT IN THE REAL
13 WORLD, SAMSUNG HAS NEVER BEEN ABLE TO DESIGN AROUND QUICK LINKS
14 OR BACKGROUND SYNC. THEY HAVE NEVER FOUND AN ALTERNATIVE THAT
15 WORKED FOR THEM IN THE REAL WORLD.

16 AND WE KNOW THAT WITH UNIVERSAL SEARCH, WHEN THEY TOOK IT
17 OUT AS PART OF THIS CASE, THEY PUT IT BACK IN AT THEIR FIRST
18 OPPORTUNITY BECAUSE THEIR USERS DEMANDED IT.

19 SO IN THE REAL WORLD -- THE DAMAGES WORLD IS MUCH EASIER
20 FOR THEM BECAUSE IT TALKS ABOUT THIS HYPOTHETICAL WORLD. BUT
21 IN THE REAL WORLD, THE WORLD IN WHICH SAMSUNG ACTUALLY MADE
22 DECISIONS THAT WE CAN SEE, SAMSUNG HAS NEVER FOUND A
23 SATISFACTORY ALTERNATIVE. IT JUST KEEPS ON INFRINGING.

24 GIVING THEM CREDIT FOR SOME HYPOTHETICAL DESIGN AROUND
25 THAT NEVER HAPPENED IS EXTREMELY CONSERVATIVE.

1 AND THEN WE CONFIRMED THAT CONSUMERS VALUE THESE FEATURES
2 OVER THE ALTERNATIVES BY CALLING ON PROFESSOR JOHN HAUSER TO DO
3 A CONJOINT SURVEY TO MEASURE EXACTLY HOW REAL CONSUMERS VALUE
4 THESE FEATURES. AND THAT SURVEY, DESIGNED AND CARRIED OUT BY
5 ONE OF THIS COUNTRY'S ABSOLUTE EXPERTS IN THE FIELD, CONFIRMED
6 THAT REAL LIFE CONSUMERS FIND THESE FEATURES VALUABLE AND
7 PREFER THEM TO ALTERNATIVES THAT DO NOT INFRINGE.

8 USING THE SAME METHODS THAT HE HAS PERSONALLY USED DOZENS
9 OF TIMES AND THAT AMERICAN INDUSTRY HAS USED THOUSANDS OF TIMES
10 A YEAR FOR THE LAST FOUR DECADES, DR. HAUSER CONFIRMED WHAT IS
11 OBVIOUS, THAT THERE IS DEMAND FOR THE PATENTED FEATURES, THAT
12 CARRIERS AND CONSUMERS WANT THESE FEATURES IN THE PHONE, THAT
13 THEY HAVE AN IMPACT ON PURCHASING DECISIONS.

14 WHAT DID DR. HAUSER DO? HE CONDUCTED A SMARTPHONE SURVEY
15 OF 507 PARTICIPANTS AND A TABLET SURVEY WITH 459 PARTICIPANTS.
16 EACH OF THESE PARTICIPANTS HAD A STRONG INCENTIVE TO
17 PARTICIPATE CONSCIENTIOUSLY IN THE SURVEY, BECAUSE YOU'LL
18 REMEMBER THEY GOT THIS POTENTIAL PRIZE SMARTPHONE OR TABLET
19 THAT INCLUDED THE FEATURES AND PRICE PREFERENCES THAT THEY HAD
20 INDICATED WITH THEIR SURVEY CHOICES.

21 THE SURVEY PARTICIPANTS WERE THEN WALKED THROUGH A SERIES
22 OF WRITTEN AND ANIMATED DESCRIPTIONS OF THE PATENTED FEATURES
23 AND ANOTHER 21 DISTRACTION FEATURES, WHICH DESCRIPTIONS THEY
24 COULD REPLAY AT ANY TIME IN THE SURVEY PROCESS, INCLUDING WHEN
25 THEY MADE THEIR SURVEY CHOICES.

1 FROM THE 500 PARTICIPANTS IN THE SMARTPHONE SURVEY -- AND
2 LET'S BE CLEAR, THESE ARE THE PEOPLE WHO ACTUALLY DID THE
3 SURVEY, THEY'RE NOT THE PEOPLE IN DR. REIBSTEIN'S VIDEOS, THESE
4 ARE THE PEOPLE DR. HAUSER SURVEYED -- DR. HAUSER WAS ABLE TO
5 GATHER A RICH DATA SET REFLECTING OVER 16,000 CHOICES OR DATA
6 POINTS WHICH HE ANALYZED USING THE INDUSTRY GOLD STANDARD, THE
7 SAWTOOTH SOFTWARE, AND WHICH ESTABLISHED DEMAND FOR THE
8 PATENTED FEATURES IN THIS CASE.

9 DR. HAUSER VALIDATED THE RESULTS OF THIS ANALYSIS WITH
10 STANDARD TESTS THAT ESTABLISHED THEIR STATISTICAL RELIABILITY.

11 LET'S BE CLEAR. SAMSUNG ABSOLUTELY HATES THE RESULTS OF
12 PROFESSOR HAUSER'S SURVEY BECAUSE IT SHOWS SO DRAMATICALLY THE
13 PATENTED FEATURES ARE VALUABLE.

14 THE SURVEY UNDERMINES EVERY ARGUMENT SAMSUNG NEEDS TO MAKE
15 IN THIS COURTROOM, SO SAMSUNG HAS DECLARED WAR ON IT.

16 EARLIER IN THIS CASE, AS YOU SAW, A SAMSUNG EXPERT NAMED
17 WAGNER TOLD THIS COURT THAT A CONJOINT SURVEY WAS EXACTLY THE
18 WAY TO MEASURE THE VALUE OF FEATURES AT ISSUE IN THIS CASE.

19 YOU DIDN'T SEE WAGNER IN THIS COURTROOM. HE'S HISTORY.

20 AND YOU CERTAINLY NEVER SAW A SURVEY DONE BY SAMSUNG.

21 WHY WOULD THEY RUN A SURVEY? THEY KNOW THAT THE FEATURES
22 ARE VALUABLE, AND THEY KNOW THAT ANY WELL DESIGNED SURVEY WOULD
23 SHOW THAT RESULT.

24 INSTEAD, YOU SAW A WHOLE FLOCK OF NEW EXPERTS TO NITPICK
25 HAUSER'S QUESTIONNAIRE, TO NITPICK THE DESIGN OF THE CHOICE

1 SCREENS, AND TO OFFER THINGS LIKE EYE TRACKING TESTS AND
2 SENTENCE COUNTING TESTS WHICH THEY ADMITTED HAVE NEVER, EVER
3 PREVIOUSLY BEEN USED IN ANY SERIOUS DISCUSSION OF THE VALUE OF
4 PATENTS.

5 AND AS THEY ADMITTED, NOT ONE OF THESE PEOPLE HAS THE
6 EXPERTISE IN CONJOINT STUDIES TO MATCH DR. HAUSER. FRANKLY,
7 THEY COULDN'T. HE IS THE BEST.

8 AND HIS STUDY CONFIRMED WHAT SAMSUNG'S ACTIONS AND YOUR
9 COMMON SENSE TELL US IS TRUE. THESE FEATURES HAVE VALUE. THEY
10 HELP TO SELL PHONES.

11 IF THEY DIDN'T, SAMSUNG WOULD NEVER HAVE COPIED THEM AND
12 IT WOULD HAVE DROPPED THEM YEARS AGO. BUT THAT NEVER HAPPENED.

13 THE SAMSUNG DECISION MAKERS, THE PEOPLE WHO DID NOT SHOW
14 UP HERE TO ANSWER OUR QUESTIONS, HAVE DECIDED THAT SAMSUNG
15 NEEDS THESE FEATURES TO CONTINUE TO BE SUCCESSFUL IN THE
16 MARKETPLACE. THEIR ACTIONS SPEAK LOUDER THAN ANY SURVEY EVER
17 COULD, AND THEIR ACTIONS CONFIRM PROFESSOR HAUSER'S RESULTS.
18 THAT IS THE REVEALED PREFERENCES THAT DR. VELLTURO TOLD US
19 ABOUT.

20 SO FOR THE SECOND FACTOR, SAMSUNG PRODUCTS WOULD HAVE BEEN
21 OFF THE MARKET FOR AT LEAST FOUR MONTHS.

22 AND THEN IN THE HYPOTHETICAL WORLD WHERE THEY STOPPED
23 USING APPLE'S PATENTED FEATURES, THAT CHANGE WOULD HAVE
24 CONTINUED TO RESULT IN ADDITIONAL SALES OF APPLE PRODUCTS.

25 AND AS YOU SAW, DR. VELLTURO VALUED THOSE DIMINISHED

1 DEMAND LOST PROFITS AT JUST UNDER \$560 MILLION.

2 FORTUNATELY, THE NEXT TWO FACTORS ARE EASY. RORY SEXTON,
3 APPLE'S VICE-PRESIDENT OF SUPPLY AND DEMAND MANAGEMENT,
4 TESTIFIED THAT APPLE HAD THE CAPACITY TO MAKE THE ADDITIONAL
5 PHONES AND TABLETS. NO SAMSUNG WITNESS DISPUTED THAT
6 TESTIMONY.

7 AND SAMSUNG DID NOT DISPUTE THE PROFIT THAT APPLE MADE
8 FROM THE IPHONE SALES DURING THE DAMAGE PERIOD.

9 THE PROOF OF EACH OF THESE FOUR FACTORS IS STRONG AND IT
10 IS DOCUMENTED.

11 SAMSUNG, ON THE OTHER HAND, HAS STAKED OUT THE POSITION
12 THAT IT COULD SIMPLY HAVE DROPPED ALL THESE PATENTED FEATURES,
13 EVEN THOUGH IT NEVER HAS IN THE REAL WORLD, THAT IT COULD HAVE
14 REDESIGNED ITS PHONES IN LESS THAN A DAY, EVEN THOUGH IT NEVER
15 HAS IN THE REAL WORLD, AND THAT THE FEATURES MAKE NO DIFFERENCE
16 TO CONSUMERS. WOULD A, SHOULD A, COULD A, EXACTLY AS I PREDICTED
17 IN MY OPENING.

18 AND EXACTLY AS I TOLD YOU SHE WOULD, SAMSUNG'S EXPERT TOLD
19 YOU THAT OUT OF THESE 37 MILLION INFRINGING SALES, APPLE DID
20 NOT LOSE ONE SALE. NOT ONE. ZERO.

21 IRONICALLY, AFTER ALL OF THIS DETAIL, YOU'LL FIND
22 INSTRUCTION NUMBER 39, WHICH IS ENTITLED MARKET SHARE. THIS
23 INSTRUCTION SAYS SIMPLY THAT YOU CAN CHOOSE TO AWARD APPLE ITS
24 LOST PROFITS BY AWARDING IT ITS MARKET SHARE OF THE INFRINGING
25 DEVICES.

1 IN SOME WAYS, MARKET SHARE IS THE EASIEST BECAUSE IT TELLS
2 US EXACTLY WHAT HAPPENED IN THE REAL WORLD. IT ACCOUNTS FOR
3 BRAND, IT ACCOUNTS FOR ADVERTISING, IT ACCOUNTS FOR SCREEN
4 SIZE, ALL OF THOSE FACTORS SAMSUNG WANTED TO TALK ABOUT.

5 AS YOU MAY RECALL, APPLE'S MARKET SHARE DURING THIS TIME
6 PERIOD WAS 40 PERCENT.

7 BUT YOU WILL RECALL THAT DR. VELLTURO HAS BEEN
8 CONSERVATIVE HERE AS WELL. HE MADE A NUMBER OF DOWNWARD
9 ADJUSTMENTS BECAUSE OF CARRIERS WHO WERE CARRYING THE PHONES,
10 AND INSTEAD OF 40 PERCENT, APPLE IS SEEKING JUST UNDER 10
11 PERCENT OF SAMSUNG'S INFRINGING SALES.

12 EITHER WAY YOU MEASURE IT, APPLE'S LOST PROFITS DAMAGES
13 ARE JUST OVER \$1 MILLION FOR 9.5 PERCENT OF SAMSUNG'S
14 INFRINGING SALES.

15 AGAIN, THIS SLIDE COMES DIRECTLY FROM EXHIBIT 222A.

16 THE SECOND TYPE OF DAMAGES IS WHAT THE LAW CALLS A
17 REASONABLE ROYALTY. OBVIOUSLY WE DO NOT GET A ROYALTY FOR ANY
18 SALE FOR WHICH YOU AWARD US LOST PROFITS, AND DR. VELLTURO WAS
19 CAREFUL NOT TO DOUBLE COUNT.

20 BUT AS THE JUDGE HAS TOLD YOU IN INSTRUCTION NUMBER 40, A
21 REASONABLE ROYALTY PAYMENT IS THE MINIMUM AMOUNT OF DAMAGES
22 APPLE SHOULD BE AWARDED FOR EVERY ACT OF INFRINGEMENT.

23 IN INSTRUCTION NUMBER 41, JUDGE KOH LISTS 15 FACTORS THAT
24 YOU SHOULD CONSIDER IN DETERMINING A REASONABLE ROYALTY. I
25 SUBMIT TO YOU THAT EVERY ONE OF THESE FACTORS ARGUES IN FAVOR

1 OF A SUBSTANTIAL ROYALTY.

2 LET'S LOOK AT FACTOR 8, THE PROFITABILITY OF THE PRODUCT
3 MADE UNDER THE PATENTS, AND ITS COMMERCIAL SUCCESS AND CURRENT
4 POPULARITY.

5 THINK BACK TO THE CHARTS WE HAVE SHOWN YOU CONCERNING THE
6 COMMERCIAL SUCCESS OF THE IPHONE AND THEN THE SUCCESS OF THE
7 INFRINGING SAMSUNG PHONES. THE IPHONE WAS A REVOLUTION. IT
8 HAS BEEN PHENOMENALLY SUCCESSFUL.

9 AND THE INFRINGING SAMSUNG PHONES HAVE DRIVEN VIRTUALLY
10 EVERY OTHER ANDROID PHONE MAKER OUT OF THE MARKETPLACE, MAKING
11 THE U.S. MARKET A TWO HORSE RACE.

12 IN SHORT, THE IPHONE WAS A REVOLUTIONARY PRODUCT IN A HOT
13 MARKETPLACE AND BOTH COMPANIES ARE MAKING MONEY. SAMSUNG'S
14 INFRINGING PRODUCTS HAVE BEEN SO SUCCESSFUL THAT SAMSUNG HAS
15 BEEN ABLE TO SUBSTANTIALLY RAISE ITS PRICES. YOU CAN SEE HOW
16 MUCH, ON YOUR SCREEN, WHICH COMPARES SAMSUNG'S AVERAGE PRICE IN
17 2011 TO ITS AVERAGE PRICE IN 2012. FACTOR 8 CALLS FOR A
18 SUBSTANTIAL ROYALTY.

19 SO LET'S LOOK AT FACTOR 9, THE ADVANTAGE OF THE PATENTED
20 PROPERTY OVER THE OLDER DEVICES.

21 THIS IS, OF COURSE, ANOTHER PLACE WHERE SAMSUNG'S
22 DOCUMENTS AND ITS CONDUCT TELL A STORY THAT IS ENTIRELY
23 DIFFERENT THAN WHAT SAMSUNG HAS SAID IN THIS COURTROOM.

24 NOTHING SPEAKS MORE CLEARLY TO THIS FACTOR THAN THE CRISIS
25 OF DESIGN E-MAIL. IN 2010, SAMSUNG WAS STUCK WITH OLD

1 TECHNOLOGY. THE DIFFERENCE BETWEEN THAT TECHNOLOGY AND THE
2 IPHONE WAS THE DIFFERENCE BETWEEN HEAVEN AND EARTH.

3 THE HIGHEST EXECUTIVES AT SAMSUNG HAVE SPELLED OUT FOR US
4 IN BLACK AND WHITE EXACTLY WHAT SAMSUNG WOULD HAVE BEEN
5 THINKING AT THE TIME OF THIS HYPOTHETICAL NEGOTIATION.

6 IN HIS OPENING, SAMSUNG'S LAWYER TOLD YOU THAT PEOPLE BUY
7 SAMSUNG PHONES FOR THEIR HARDWARE, NOT FOR THEIR SOFTWARE. HE
8 STOOD RIGHT HERE AND HE TOLD YOU THAT.

9 BUT THEN YOU SAW WHAT SAMSUNG SAID IN ITS INTERNAL
10 DOCUMENTS -- EXHIBIT 147 -- WHAT THE SAMSUNG DECISION MAKERS
11 WHO DIDN'T COME HERE TO TESTIFY UNDER OATH WERE ACTUALLY
12 THINKING, AND THE TRUTH IS ENTIRELY DIFFERENT. THEY SAID
13 SOFTWARE IS THE NEW VALUE DRIVER.

14 EVEN MR. SOHN EVENTUALLY ADMITTED ON CROSS-EXAMINATION
15 THAT SOFTWARE VALUE HAS BECOME MORE IMPORTANT IN SMARTPHONES.

16 FINALLY, THE FIRST GOOGLE WITNESS, MR. LOCKHEIMER,
17 TESTIFIED THAT BACKGROUND SYNC WAS INCREDIBLY USEFUL, THAT WAS
18 HIS WORDS, INCREDIBLY USEFUL.

19 AFTER THAT TESTIMONY, SAMSUNG STOPPED ASKING THE GOOGLE
20 WITNESSES ABOUT THE VALUE OF SOFTWARE FEATURES.

21 FACTOR 9 ARGUES IN FAVOR OF A SUBSTANTIAL ROYALTY.

22 LET'S LOOK AT FACTOR 11, THE EXTENT TO WHICH THE INFRINGER
23 HAS MADE USE OF THE INVENTION AND ANY EVIDENCE PROBATIVE OF
24 THAT VALUE.

25 YOU KNOW THIS NUMBER NOW BY HEART. OVER 37 MILLION

1 INFRINGING SALES. THE POPULATION OF SAN JOSE IS 1 MILLION
2 PEOPLE. YOU COULD GIVE EVERY PERSON IN SAN JOSE 37 INFRINGING
3 PHONES. THE SIZE OF THIS ILLEGAL ACTIVITY IS BEYOND
4 COMPREHENSION.

5 THE COURT: I'M SORRY TO INTERRUPT YOU, BUT IT'S
6 10:30 NOW. LET'S GO AHEAD AND TAKE OUR BREAK.

7 MR. MCELHINNY: THANK YOU, YOUR HONOR.

8 THE COURT: WE'LL TAKE A 15 MINUTE BREAK.

9 PLEASE DON'T RESEARCH OR DISCUSS THE CASE. WE'LL SEE YOU
10 IN 15 MINUTES.

11 (JURY OUT AT 10:31 A.M.)

12 THE COURT: OKAY. THE JURORS HAVE LEFT THE
13 COURTROOM. LET'S TAKE OUR BREAK NOW. THANK YOU.

14 (RECESS FROM 10:31 A.M. UNTIL 10:45 A.M.)

15 (JURY IN AT 10:45 A.M.)

16 THE COURT: WELCOME BACK. PLEASE TAKE A SEAT.
17 THE TIME IS NOW 10:46.

18 GO AHEAD, PLEASE.

19 MR. MCELHINNY: IT'S STILL ME, BUT I WON'T BE MUCH
20 LONGER, SO IF YOU CAN JUST HOLD ON.

21 WE WERE TALKING ABOUT FACTOR 11 ON THE LIST. WE TALKED
22 ABOUT 37 MILLION, OVER 37 MILLION INFRINGING SALES.

23 AND SO THE QUESTION IS, IS THIS USE PROBATIVE OF VALUE?
24 HERE YOU CAN RELY ON YOUR COMMON SENSE FOR WHAT DR. VELLTURO
25 CALLED REVEALED PREFERENCES.

1 SAMSUNG COPIED THE INVENTIONS BECAUSE IT THOUGHT THEY WERE
2 CRITICAL. IT CONTINUES TO USE THREE OF THEM BECAUSE IT HAS NOT
3 BEEN ABLE TO THINK OF ANY BETTER WAY, AND IT IS FIGHTING THIS
4 CASE BECAUSE IT KNOWS IT NEEDS THOSE FEATURES TO CONTINUE TO
5 SUCCEED IN THE MARKETPLACE.

6 JUST LIKE YOUR PARENTS TOLD YOU WHEN YOU WERE CHILDREN,
7 WATCH WHAT THEY DO, NOT WHAT THEY SAY IN A COURTROOM WHEN THEY
8 ARE WORRIED ABOUT THE CONSEQUENCES.

9 MAYBE IT WAS MY PARENTS WHO SAID THAT, BUT THAT'S SLIGHTLY
10 DIFFERENT. OKAY.

11 FACTOR 11 CALLS FOR A SUBSTANTIAL ROYALTY.

12 AND THEN WE CAN GO BACK TO FACTOR 5. YOU WILL SEE WHY A
13 ROYALTY AGREED UPON IN AUGUST OF 2011 WOULD HAVE BEEN
14 SIGNIFICANT.

15 WHAT WAS THE COMMERCIAL RELATIONSHIP BETWEEN APPLE AND
16 SAMSUNG IN AUGUST OF 2011? YOU KNOW THAT A YEAR PREVIOUSLY,
17 APPLE HAD ASKED SAMSUNG NOT TO COPY ITS PATENTS, AND THEN BY
18 AUGUST 2011, APPLE KNEW THAT SAMSUNG HAD SIMPLY BLOWN THAT
19 REQUEST OFF.

20 APPLE HAD SEEN THE NEW GALAXY PHONES AND IT KNEW THAT
21 SAMSUNG WAS RIPPING OFF KEY FEATURES. APPLE KNEW THAT
22 SAMSUNG'S COPYING WAS HELPING SAMSUNG STEAL SALES FROM APPLE.

23 SO IN AUGUST OF 2011, IF SAMSUNG HAD ASKED TO LICENSE FIVE
24 KEY SOFTWARE FEATURES, WHAT WOULD APPLE HAVE SAID? WOULD APPLE
25 HAVE SAID WHAT SAMSUNG'S WITNESSES TOLD YOU, SURE, GO AHEAD,

1 TAKE ALL FIVE FOR 1.75 A PHONE?

2 YOU KNOW THAT WOULD NOT HAVE HAPPENED. YOU KNOW THAT
3 WOULD NOT HAVE HAPPENED.

4 REMEMBER THAT -- THE HIGHLIGHT FOR ME OF THE TRIAL,
5 REMEMBER WHEN MR. PENDLETON, THE ADVERTISING GUY FROM STA, WAS
6 SITTING UP THERE AND MR. LEE SURPRISED HIM BECAUSE HE'D BEEN
7 TALKING ABOUT S BEAM, THIS NEAR FIELD COMMUNICATION, AND
8 MR. LEE SAID TO HIM, WOULD SAMSUNG HAVE LICENSED S BEAM TO A
9 COMPETITOR FOR PENNIES ON THE DOLLAR?

10 MR. PENDLETON ALMOST FELL OUT OF HIS CHAIR. HE ALMOST
11 SWALLOWED HIS TONGUE BECAUSE THE CONCEPT OF GIVING AWAY AN
12 IMPORTANT FEATURE WAS SO FAR FROM ANYTHING HE EVER WOULD HAVE
13 CONSIDERED IN THE REAL WORLD.

14 BY THE WAY, THAT SAME FEATURE WAS ONE THAT THE EYE
15 TRACKING EXPERT SAID HAD NO VALUE. COMPARE HER TESTIMONY TO
16 THE TESTIMONY OF THE SAMSUNG EXECUTIVE THAT YOU SAW.

17 AUGUST 2011 WAS ALSO A CRITICAL POINT IN THE U.S. MARKET.
18 60 MILLION CONSUMERS WERE GOING TO BUY THEIR FIRST IPHONES
19 WITHIN THE NEXT 18 MONTHS. AND, AGAIN, YOUR COMMON SENSE TELLS
20 YOU WHAT APPLE WOULD HAVE DONE.

21 TO BE HONEST, I DON'T UNDERSTAND SAMSUNG'S EVIDENCE ON
22 THIS POINT. SAMSUNG TOLD YOU THAT APPLE HAD DECLARED WAR ON
23 GOOGLE. THEY TOLD YOU THAT APPLE WAS BEATEN DOWN BY SAMSUNG'S
24 FABULOUS ADVERTISING CAMPAIGN AND THAT APPLE WAS WORRIED THAT
25 NO ONE WANTED ITS PRODUCTS.

1 OBVIOUSLY NONE OF THAT IS TRUE.

2 BUT THINK FOR A MINUTE. SUPPOSE IT WERE TRUE. SUPPOSE
3 THAT THEY WERE RIGHT ABOUT THAT. WOULD THAT HAVE MADE APPLE'S
4 DEMAND IN AUGUST 2011 HIGHER OR LOWER? DO YOU CHARGE LESS TO A
5 COMPETITOR THAT YOU ARE WORRIED ABOUT? I DON'T THINK SO. I
6 DON'T THINK YOU DO. IF YOU ARE WORRIED ABOUT A COMPETITOR, YOU
7 CHARGE THEM MORE.

8 THE SIMPLE TRUTH IS THAT WHEN YOU REACH THIS POINT IN THE
9 INSTRUCTIONS AND WHEN YOU CONSIDER THE FACTS THAT ARE SET OUT
10 IN YOUR INSTRUCTIONS AND ASK THE QUESTIONS THAT THE LAW ASKS
11 YOU TO -- TELLS YOU TO ASK, WHAT WOULD HAVE HAPPENED IN THIS
12 HYPOTHETICAL WORLD? WHAT POSITION WOULD THE PARTIES HAVE
13 TAKEN? YOU WILL SEE THAT DR. VELLTURO'S OPINION ON REASONABLE
14 ROYALTY IS ACCURATE, FAIR, AND BALANCED.

15 THE ROYALTIES HE SET FOR EACH PATENT ARE NOT HIGHER THAN
16 APPLE WOULD HAVE ASKED, AND SAMSUNG, FACING A CRISIS OF DESIGN,
17 WOULD HAVE PAID THEM TO BE ABLE TO STAY IN THIS MARKET.

18 AFTER CONSIDERING ALL 15 FACTORS, DR. VELLTURO CALCULATED
19 A ROYALTY RATE FOR EACH OF THE FIVE PATENTS TO BE APPLIED
20 SEPARATELY TO PHONES AND TABLETS. YOU CAN SEE THOSE ROYALTY
21 RATES ON SLIDE 96, BUT YOU WILL HAVE THEM IN EVIDENCE AT MY
22 FAMOUS PX 222A, AND THEY'RE AT PAGE 37 OF THAT EXHIBIT.

23 SO HOW WILL YOU FILL OUT THE VERDICT FORM ON THIS ISSUE?
24 QUESTION 9 ASKS YOU FOR A TOTAL OF DAMAGES, COMBINED LOST
25 PROFITS AND REASONABLE ROYALTY.

1 AND THEN QUESTION 10A ASKS YOU FOR A DETAILED BREAKDOWN BY
2 PHONE, BY PATENT, AND BY TIME PERIODS.

3 WE HAVE PROVIDED YOU WITH A CHART THAT SHOWS YOU WHAT THE
4 VERDICT FORM WOULD LOOK LIKE IF YOU ACCEPTED DR. VELLTURO'S
5 OPINION. IT'S ON THE SCREEN HERE. YOU HAVE FOUR SECONDS TO
6 MEMORIZE IT, BUT YOU COULD ALSO FIND IT AT PAGE 13A OF
7 EXHIBIT 222A.

8 FINALLY, YOU WILL BE ASKED QUESTION 10B, WHICH ASKS YOU TO
9 BREAK OUT DAMAGES FOR THREE ACCUSED PHONES FOR THREE PARTICULAR
10 TIME PERIODS. DR. VELLTURO'S OPINION AS TO THE CORRECT ANSWER
11 HERE IS HERE ON SLIDE 97, BUT YOU WILL ALSO FIND IT AT 222A AT
12 PAGE 12.

13 WHEN YOU LOOK AT EXHIBIT 222A, AND IF YOU LOOK AT PAGES 19
14 AND 24, YOU WILL FIND THAT WE HAVE GIVEN YOU ALTERNATIVE CHARTS
15 WITH LOWER DAMAGES AMOUNTS THAT YOU CAN USE TO FILL OUT THIS
16 VERDICT FORM.

17 WE DIDN'T DO THAT BECAUSE WE THINK IT'S RIGHT, BUT THEY
18 ARE ALTERNATIVES THAT WILL BE HELPFUL TO YOU IF YOU REACH
19 CONCLUSIONS ABOUT LIABILITY OR DAMAGES THAT ARE NOT THE ONES
20 FOR WHICH I'VE BEEN ADVOCATING.

21 WE PROMISED YOU THAT WE WOULD GIVE YOU THE INFORMATION YOU
22 NEED TO MAKE YOUR DECISION IN A FORM THAT WOULD BE EASY FOR YOU
23 TO USE AND WE HAVE KEPT OUR WORD.

24 IN CLOSING, I WOULD LIKE TO SAY THIS: BRINGING THIS
25 LAWSUIT WAS APPLE'S LAST CHOICE, ITS LAST OPTION. YOU KNOW

1 THAT WE MET WITH SAMSUNG A YEAR BEFORE WE SUED AND TRIED TO
2 PERSUADE THEM TO COMPETE FAIRLY.

3 YOU KNOW, HOWEVER, FROM SAMSUNG'S INTERNAL DOCUMENTS THAT
4 SAMSUNG NEVER, EVER CONSIDERED THAT OPTION. THEY WERE TOO
5 FOCUSSED ON THEIR OWN CRISIS OF DESIGN, AND THEIR REALIZATION
6 THAT THE ONLY WAY THEY COULD SUCCEED WAS, QUOTE, "TO MAKE
7 SOMETHING LIKE THE IPHONE."

8 SAMSUNG WAS COMMITTED TO TRYING TO GET AWAY WITH PATENT
9 INFRINGEMENT.

10 APPLE CANNOT SIMPLY WALK AWAY FROM ITS INVENTIONS. APPLE
11 CANNOT DO THAT TO THE PEOPLE THAT YOU SAW AND THE OTHER PEOPLE
12 LIKE THEM WHO WORKED SO HARD TO COME UP WITH SUCH FABULOUS
13 IDEAS.

14 AND SO WE ARE HERE, 37 MILLION ACTS OF INFRINGEMENT LATER,
15 AND WE ARE COUNTING ON YOU FOR JUSTICE.

16 THE COURT: OKAY. TIME IS 10:54.

17 MR. PRICE: YOUR HONOR, MAY I JUST HAVE A SECOND TO
18 SET UP?

19 THE COURT: OF COURSE.

20 (PAUSE IN PROCEEDINGS.)

21 MR. QUINN: YOUR HONOR, I'M READY.

22 THE COURT: OKAY. TIME IS NOW 10:56. GO AHEAD,
23 PLEASE.

24 ///

25 ///

1 (MR. PRICE GAVE HIS CLOSING ARGUMENT ON BEHALF OF
2 DEFENDANTS.)

3 MR. PRICE: GOOD MORNING, LADIES AND GENTLEMEN OF THE
4 JURY. YOU'RE GOING TO SEE SOMETHING THAT'S NEVER BEEN
5 WITNESSED IN A COURTROOM BEFORE, I THINK. YOU'RE GOING TO HEAR
6 FROM FOUR LAWYERS IN CLOSING ARGUMENT, BECAUSE WE WANTED YOU TO
7 HEAR FROM THE LAWYERS WHO HAD PRESENTED WITNESSES ON RELEVANT
8 TOPICS. THAT MIGHT HELP YOU REMEMBER THE TESTIMONY THAT CAME
9 IN.

10 PLUS NONE OF US IS AS DYNAMIC AS MR. MCELHINNY, SO WE
11 WANTED TO MAKE SURE YOU SAW A FEW DIFFERENT PERSONALITIES AT
12 THE SAME TIME.

13 I'M GOING TO TALK TO YOU ABOUT THE REAL WORLD EVIDENCE
14 ABOUT COPYING AND WHY SAMSUNG IS ABLE TO SELL ITS PHONES.

15 AND THEN YOU'RE GOING TO HEAR FROM MR. NELSON, WHO'S GOING
16 TO TALK TO YOU ABOUT SAMSUNG'S -- I MEAN APPLE'S PATENTS,
17 VALIDITY AND INFRINGEMENT.

18 YOU'RE GOING TO HEAR FROM MR. JOHNSON, WHO WILL TALK TO
19 YOU ABOUT SAMSUNG'S PATENTS.

20 AND THEN YOU'RE GOING TO HEAR FROM MR. QUINN, WHO'S GOING
21 TO TALK TO YOU ABOUT THE DAMAGES IN THIS CASE AND WHAT APPLE IS
22 ASKING FOR.

23 NOW, DURING THIS PRESENTATION, HIS PRESENTATION, I DON'T
24 KNOW HOW MANY TIMES MR. MCELHINNY SAID THAT BASICALLY SAMSUNG'S
25 SALES OF THESE ACCUSED PRODUCTS WERE CAUSED BECAUSE THEY HAD

1 TECHNOLOGY RELATING TO THESE FIVE, THE FIVE PATENTS.

2 AND THEY'RE ASKING FOR A BIG NUMBER HERE, AND THE REASON
3 THAT YOU HEARD THE WORD "COPY" SO MUCH, I'M GOING TO SUBMIT TO
4 YOU, IS BECAUSE THEY HAVE TO TRY TO GET YOU A LITTLE ANGRY TO
5 JUSTIFY THIS KIND OF NUMBER. COPY. COPY. STEAL.

6 I THINK IN THE OPENING MR. MCELHINNY SAID SOMETHING ABOUT
7 THE IPHONE BEING A HERO AND SAMSUNG TURNING TO THE DARK SIDE.
8 I DON'T KNOW IF YOU RECALL THAT.

9 WELL, FIRST LET ME ADDRESS COPYING, AND LET ME ADDRESS IT
10 VERY SQUARELY, AND I PUT THIS SLIDE UP HERE TO TALK ABOUT THESE
11 PARTICULAR PATENTS, AND IT'S TRUE THAT IF YOU DON'T PRACTICE A
12 PATENT, THAT DOESN'T MEAN THAT YOU CAN'T COLLECT DAMAGES FOR
13 IT. YOU STILL GET DAMAGES IF YOU HAVE A PATENT THAT YOU DON'T
14 PRACTICE AND SOMEONE ELSE IS.

15 BUT YOU CAN'T COPY SOMETHING FROM THE IPHONE IF IT'S NOT
16 IN THE IPHONE.

17 AND THE UNDISPUTED EVIDENCE IS THAT APPLE, IN ITS IPHONE,
18 HAS NEVER PRACTICED THE '959, CLAIM 25 OF THE '959, WHICH IS
19 THE UNIVERSAL SEARCH; APPLE HAS NEVER PRACTICED, IN THE IPHONE,
20 CLAIM 20 OF PATENT '414, BACKGROUND SYNCHRONIZATION, IT DOESN'T
21 DO WHAT ITS PATENT SAYS; CLAIM 18 OF THE '172, THE WORD
22 SUGGESTION, APPLE HAS NEVER USED THAT CLAIM IN ITS IPHONE.
23 IT'S NOT PART OF THAT HEROIC IPHONE WHICH CAME OUT IN 2007.

24 SO SAMSUNG DIDN'T COPY IT. GOOGLE DIDN'T COPY IT. YOU
25 CAN'T COPY IT IF IT'S NOT THERE, IF APPLE DOESN'T PRACTICE IT.

1 YOU'VE HEARD NO EVIDENCE IN THIS TRIAL AT ALL, BY THE WAY,
2 THAT PRACTICED -- THAT APPLE EVER PRACTICED CLAIM 9 OF THE '647
3 PATENT, WHICH IS THAT QUICK LINKS PATENT.

4 AND THE REASON, BY THE WAY, IS BECAUSE THESE PATENTS ARE
5 SPECIFIC WAYS, USING SPECIFIC ARCHITECTURES, TO ACCOMPLISH
6 SOMETHING. THEY'RE NOT PATENTS COVERING UNIVERSAL SEARCH OR
7 WORD SUGGESTION. THEY ARE PARTICULAR WAYS OF DOING IT.

8 SO YOU CAN'T COPY IF IT'S NOT IN THERE.

9 AND I THINK THE EVIDENCE SHOWS THAT, BY THE WAY THEY SLIDE
10 TO UNLOCK, APPLE'S PARTICULAR CLAIM ISN'T BEING PRACTICED BY
11 APPLE NOW WHEN THEY CHANGED IT IN IOS 7.

12 THE SECOND THING, OBVIOUSLY, IS THAT IN A DAMAGES CLAIM,
13 APPLE IS SAYING THAT, LOOK, SAMSUNG IS PRACTICING PARTICULAR
14 CLAIMS USING PARTICULAR ARCHITECTURE THAT'S CAUSING SALES, AND
15 IF IT COULDN'T DO THAT, IF IT WASN'T DOING THAT, THEN A LOT OF
16 PEOPLE WOULD COME TO APPLE, WHICH ALSO IS NOT PRACTICING THOSE
17 CLAIMS OF THOSE PATENTS.

18 AND THAT MAKES NO SENSE WHATSOEVER. WHY WOULD YOU GO FROM
19 ONE PHONE THAT YOU BOUGHT TO ANOTHER WHICH LACKS THE SAME, YOU
20 KNOW, PRACTICE THAT THE PHONE YOU WERE WITH HAD? IT SIMPLY
21 MAKES NO SENSE.

22 SO I WANTED TO TALK ABOUT THAT FIRST JUST TO SHOW WHY THIS
23 IS IMPORTANT, NOT BECAUSE YOU CAN'T COLLECT DAMAGES IF YOU HAVE
24 A PATENT THAT YOU'RE NOT PRACTICING. IT'S BECAUSE YOU CAN'T
25 COPY IT -- IF IT'S NOT IN YOUR PRODUCT, SOMEONE CAN'T COPY IT.

1 AND WHY WOULD SOMEONE COME TO YOUR PRODUCT IF YOU'RE NOT
2 PRACTICING THOSE SAME PATENTS?

3 SO LET ME GET A LITTLE BIT MORE DETAILED, THEN, INTO WHAT
4 WE SHOWED YOU. THE TRUTH IS THAT THE PARTICULAR PATENTED
5 CLAIMS THAT WERE IN THIS CASE WERE CREATED INDEPENDENTLY, NOT
6 COPIED, BY ANOTHER COMPANY WITH BRILLIANT ENGINEERS, GOOGLE,
7 RIGHT UP THE STREET.

8 AND THE TRUTH IS THAT SAMSUNG SOLD MORE THAN ANY OTHER
9 ANDROID PHONE MAKER BECAUSE IT MADE THE BEST HARDWARE FOR THAT
10 ANDROID PLATFORM WHICH GOOGLE INDEPENDENTLY CREATED.

11 AND APPLE IS TRYING TO DISTRACT YOU FROM THAT BY SAYING
12 COPYING AND BY, BY INTENTIONALLY MISINTERPRETING THE DOCUMENTS.

13 AND LET ME START WITH THE CRISIS OF DESIGN, AND THAT'S
14 EXHIBIT 149. THAT WAS IN FEBRUARY OF 2010. IT WAS A
15 PRESENTATION GIVEN BY THE HEAD OF THE MOBILE DIVISION. I
16 REALLY ASK YOU TO LOOK AT THAT. YOU HEARD MR. MCELHINNY SAY,
17 IN SAMSUNG'S OWN WORDS, THEY WERE TO COPY THE IPHONE.

18 THAT'S NOT WHAT THAT SPEECH WAS ALL ABOUT. WHEN YOU READ
19 ABOUT IT, YOU SEE THAT, YES, THEY ARE PRAISING THE IPHONE. IT
20 REALLY DID COME OUT AND SURPRISE THE INDUSTRY.

21 AND THEY ARE ALSO SAYING THE OMNIA, A SAMSUNG PHONE WHICH
22 USED THE MICROSOFT PLATFORM, THAT'S THE ONE MADE UP IN
23 WASHINGTON BY ANOTHER COMPANY, YOU KNOW, IT WASN'T VERY GOOD
24 COMPARED TO THE APPLE OPERATING PLATFORM. AND THAT'S PART OF
25 THE DOCUMENT.

1 BUT THE LANGUAGE ABOUT COPYING THE IPHONE, THAT'S WHAT
2 CARRIERS WERE SAYING.

3 AND IF WE CAN SHOW THAT, KEN?

4 AND WHAT WAS BEING SAID HERE IS THAT, YOU KNOW, SAMSUNG IN
5 THE PAST HAD ALWAYS LISTENED TO CARRIERS, THE KIND THAT SAYS
6 YES TO WHATEVER A CARRIER WANTS, THAT'S A SHORTCUT TO GOING OUT
7 OF BUSINESS.

8 AND YOU HEARD MR. SOHN COME HERE AND TELL YOU THAT, YOU
9 KNOW, BEFORE, BEFORE ACTUALLY THE IPHONE AND FOR A FEW YEARS
10 AFTERWARDS, THAT THE MANUFACTURERS LISTENED TO CARRIERS AS TO
11 WHAT TO DO AND WHAT PHONES TO MAKE INSTEAD OF GOING DIRECTLY TO
12 THE CONSUMER.

13 AND HE SAYS, "I HEAR THINGS LIKE LET'S MAKE SOMETHING LIKE
14 THE IPHONE," AND THAT'S COMING FROM THE CARRIERS. NOWHERE IN
15 THAT DOCUMENT DOES HE SAY "LET'S COPY THE IPHONE." AND THEY
16 DON'T COPY THE IPHONE.

17 WHAT HE'S SAYING IS THAT WE ARE BEHIND. WE NEED TO FIND
18 AN OPERATING SYSTEM PLATFORM. AND THERE ARE DOCUMENTS THAT YOU
19 WILL SEE IN THAT TIMEFRAME THAT SHOW JUST THAT, AND THAT IS
20 EXHIBIT, FOR EXAMPLE, EXHIBIT 201. MR. MCELHINNY SHOWED YOU
21 THIS DURING THE TRIAL.

22 AND IF YOU GO TO PAGE -- KEN, PAGE 17 -- DO YOU REMEMBER,
23 THIS WAS IN 2009 AND IT'S AN INTERNAL SAMSUNG DOCUMENT, AND DO
24 YOU REMEMBER MR. MCELHINNY SAID THAT HARDWARE USED TO BE THE
25 PRIMARY BUYING FACTOR AND NOW IT'S SOFTWARE, AND YOU HEARD HIM

1 SAY AGAIN IN CLOSING THAT SOFTWARE IS WHAT SELLS PHONES, NOT
2 HARDWARE.

3 WELL, THAT'S MISLEADING BECAUSE WHAT THIS IS TALKING
4 ABOUT, YOU SEE HARDWARE IS THE PRIMARY BUYING FACTOR. REMEMBER
5 YOU USED TO GO INTO A STORE AND YOU WOULD BUY A PHONE BECAUSE
6 IT WAS A FLIP PHONE OR IT WAS A CAMERA PHONE OR WHATEVER?

7 OKAY. WELL, THOSE DAYS ARE OVER. PEOPLE BUY PHONES NOW
8 FOR CONTENT, FOR SERVICES.

9 AND WHAT MR. MCELHINNY DIDN'T SHOW YOU WAS THE SECOND PART
10 HERE. APPLE USES APPLICATIONS, NOT HARDWARE, FOR SEGMENTATION.
11 AND THIS IS HARD TO SEE. IT'S EXPERIENCE DRIVEN BY AFTERMARKET
12 CUSTOMIZATION.

13 AND IF YOU LOOK THROUGH THIS DOCUMENT -- AND I ASK YOU TO
14 LOOK ALSO AT PAGES 13 AND 81 -- SAMSUNG WAS IN A PLACE WHERE IT
15 HAD TO FIND AN OPERATING SYSTEM IT COULD USE THAT PEOPLE COULD
16 THEN DOWNLOAD THESE WONDERFUL APPLICATIONS THAT CONSUMERS NOW
17 WANTED FROM THIRD PARTIES, SO IT COULD DOWNLOAD MAPS OR NETFLIX
18 OR PLANTS VERSUS ZOMBIES OR CUT THE ROPE OR MARVEL COMICS.
19 THAT WAS AN IMPORTANT PART.

20 AND WHEN YOU SEE THESE DOCUMENTS THAT SAY SOFTWARE IS A
21 DRIVING FACTOR, READ THE DOCUMENT CAREFULLY, BECAUSE WHAT IT
22 SAYS IS THEY'RE TALKING ABOUT THE SOFTWARE THAT ALLOWS THE
23 CONSUMER EXPERIENCE OF GETTING THESE APPLICATIONS ON THE PHONE
24 SO THE CUSTOMER CAN CUSTOMIZE HIS OWN PHONE.

25 SAMSUNG RECOGNIZED THAT'S WHAT IT NEEDED BACK IN 2009, AND

1 THE WAY IT RESOLVED THAT PROBLEM IS UNDISPUTED. IT'S IN THE
2 DOCUMENTS THEMSELVES. IT CHOSE TO GO WITH GOOGLE'S ANDROID
3 PLATFORM AS, BY THE WAY, HAVE ALMOST EVERY OTHER MANUFACTURER.
4 I MEAN, THE ANDROID PLATFORM IS THE WORLD'S ALTERNATIVE TO
5 APPLE'S IOS.

6 AND WE'VE BROUGHT IN HERE AND YOU HEARD MR. LOCKHEIMER
7 TESTIFY, HIROSHI LOCKHEIMER. AND GOOGLE RECOGNIZED THIS NEED
8 WAY BACK IN 2006. MR. LOCKHEIMER JOINED THEM IN 2006, GOOGLE
9 IN 2006, AND THAT IS THAT MANUFACTURERS WEREN'T CONCENTRATING
10 ON SOFTWARE AND THAT GOOGLE DECIDED TO BUILD A PLATFORM, WHICH
11 BECAME ANDROID, THAT WOULD BE FLEXIBLE AND OPEN SOURCED. IT
12 WOULD BE AN OPEN PLATFORM THAT WOULD GIVE YOU THE GUTS ON
13 OPERATING SYSTEM THAT ANY MANUFACTURER COULD USE AND THEN
14 APPLICATION DEVELOPERS, THE PEOPLE WHO WRITE ALL THOSE COOL
15 APPS, YOU KNOW, COULD MAKE FOR IT AND IT WOULD WORK WITH THAT
16 PLATFORM.

17 AND, OF COURSE, GOOGLE MAKES ITS OWN, YOU KNOW, ITS OWN
18 APPLICATIONS.

19 AND THEY BEGAN DOING THAT, AGAIN, BACK IN 2006. THEY HAD
20 A VERSION 1 OUT IN 2008.

21 AND HERE'S THE KEY UNDISPUTED FACT IN THIS CASE: THAT
22 EVERY PATENT WHICH APPLE CLAIMS IS INFRINGED IN THIS CASE IS
23 INFRINGED WITH THE BASIC GOOGLE ANDROID SOFTWARE BECAUSE THEY
24 INCLUDE -- THEY ACCUSE THE GALAXY NEXUS OF INFRINGING EVERY ONE
25 OF THEIR FIVE PATENTS, AND YOU HEARD MR. LOCKHEIMER TELL YOU

1 THAT THE SOURCE CODE, THE CODE FOR EVERY ONE OF THOSE FEATURES
2 WAS DEVELOPED BY ENGINEERS AT GOOGLE.

3 AND THIS IS NOT -- THIS IS DIFFERENT, KEN.

4 THIS IS NOT SAYING, POINTING A FINGER AT GOOGLE OR ANDROID
5 WHATSOEVER. THIS IS SAYING THAT APPLE HAS FIVE PATENTS WITH
6 PARTICULAR METHODOLOGIES AND ARCHITECTURES THAT THEY CLAIM ARE
7 INFRINGED.

8 NO. WE BROUGHT IN THE GOOGLE FOLKS, THE GOOGLE ENGINEERS
9 WHO INDEPENDENTLY DEVELOPED WHAT ANDROID DOES AND TOLD YOU IT
10 WAS DIFFERENT, DIFFERENT ARCHITECTURE, AND THAT'S SLIDE 20.

11 PUT THAT UP.

12 AND YOU'RE GOING TO HEAR MORE ABOUT THEM WHEN MR. NELSON
13 TALKS. WE'RE NOT POINTING THE FINGER AT GOOGLE. WE'RE SAYING
14 THEY INDEPENDENTLY DEVELOPED THESE FEATURES AND THAT THEY DON'T
15 INFRINGE. WE BROUGHT YOU THE INVENTORS, SHALL WE SAY.

16 AND A QUICK DISTRACTION ON THE INVENTORS. THE JUDGE
17 INSTRUCTED YOU AT THE TIME THE EVIDENCE CAME IN AS TO WHAT THAT
18 WAS RELEVANT TO -- THAT'S T-284, KEN -- AND THAT'S RELEVANT TO
19 POSSIBLE BIAS. IF A WITNESS TAKES THE STAND, IF THEY HAVE A
20 POTENTIAL BIAS, A FINANCIAL RESULT PUT IN THE CASE, OR THEY
21 COULD SOMEHOW LOSE MONEY, THAT'S SOMETHING YOU CAN CONSIDER IN
22 SEEING WHETHER THEY'RE TRUTHFUL.

23 BUT WHEN THOSE WITNESSES TOOK THE STAND, APPLE KNEW ABOUT
24 THE ABILITY TO DO THAT. APPLE KNEW -- THEY DIDN'T ASK THOSE
25 WITNESSES IF THEY KNEW, THEY DIDN'T ASK THE WITNESSES IF THEY

1 WERE BIASED, AND YOU COULD SEE THAT THEY WEREN'T BIASED.

2 WHO IN THIS TRIAL HAS TRIED TO HIDE FROM YOU THE RELEVANCE
3 OF GOOGLE IN THIS CASE? IT'S NOT -- IT'S NOT SAMSUNG. IT'S
4 APPLE.

5 EVERY WITNESS WAS ASKED, GOOGLE IS NOT A PARTY TO THIS
6 CASE, YOU KNOW? YOU UNDERSTAND THAT GOOGLE IS NOT A PARTY TO
7 THIS CASE? EVERY ONE OF THOSE WITNESSES WAS ASKED THAT BY
8 APPLE TO GIVE YOU THE IMPRESSION THAT GOOGLE WAS IRRELEVANT.

9 GOOGLE IS CRITICAL ON THE QUESTION OF COPYING BECAUSE WE
10 DIDN'T COPY. SAMSUNG DIDN'T COPY. THEY WEREN'T TOLD TO COPY.
11 THE ENGINEERS WHO CAME UP WITH THESE FEATURES CAME IN HERE AND
12 TOLD YOU THEY DIDN'T COPY.

13 NOW, THERE'S ONE AREA, WHEN YOU USE THE GOOGLE OPERATING
14 SYSTEM, THERE ARE SOME DIFFERENCES YOU CAN MAKE, LITTLE CHANGES
15 YOU CAN MAKE TO IT SO THAT YOU CAN DIFFERENTIATE YOURSELF FROM
16 ANOTHER COMPANY, LIKE HTC OR MOTOROLA, AND ONE OF THOSE WAS THE
17 COVER, THE SLIDE TO UNLOCK. YOU CAN CUSTOMIZE THAT.

18 NOW, APPLE ACCUSES GOOGLE'S WAY OF DOING THAT AS
19 INFRINGING. THE BASIC ANDROID CODE WHICH GOOGLE INDEPENDENTLY
20 CAME UP WITH THEY CLAIM INFRINGES.

21 WELL, WE BROUGHT IN BEFORE YOU SAMSUNG'S SOFTWARE DESIGNER
22 ON, YOU KNOW, THE FACE OF THE PHONE, AND YOU HEARD FROM
23 YOUNGMI KIM, AND SHE TESTIFIED ABOUT WHETHER OR NOT SHE COPIED
24 APPLE'S SLIDE TO UNLOCK AND SHE SAID ABSOLUTELY NOT, AND SHE
25 POINTED OUT THAT THEY TRY TO DIFFERENTIATE THEIR PRODUCTS.

1 AND WHEN YOU SAW HER TESTIFY, YOU COULD EVALUATE HER
2 DEMEANOR.

3 AND IF YOU LOOK AT HER WORK -- AGAIN, LOOK AT WHAT YOU DO,
4 NOT WHAT YOU SAY -- IF WE CAN PUT UP CHART 47 -- IF YOU LOOK AT
5 HER WORK -- BOY, THIS IS HARD TO SEE -- SHE CAME UP, FOR
6 EXAMPLE, WITH THE PUZZLE DESIGN BACK IN 2008/2009.

7 NOW, YOU'VE SEEN SOME DOCUMENTS THAT ARE FROM THE SOFTWARE
8 VERIFICATION GROUP WHICH COMPARE APPLE AND IPHONE ON MANY
9 LEVELS AND SOME TALK ABOUT ELEMENTS OF SLIDE TO UNLOCK.

10 AND WHAT SHE TOLD YOU WAS THESE ARE KIND OF LIKE BOOK
11 REPORTS THAT SHE LOOKS AT AND, FRANKLY, SHE PAYS NO ATTENTION
12 TO THEM. AND THE WAY YOU KNOW SHE PAYS NO ATTENTION TO THEM IS
13 BY THE RESULTS OF HER WORK. SHE DID NOT COPY THE IPHONE.

14 LOOK AT WHAT SHE CAME OUT WITH. WELL, THERE WAS THE SLIDE
15 TO UNLOCK WHICH LOOKS ABSOLUTELY NOTHING LIKE THE IPHONE.

16 SHE CAME OUT WITH THE GALAXY S II. THE GALAXY S II IS --
17 IN FACT, KEN, MAYBE WE CAN PUT UP SLIDE 44 BECAUSE I'M NOT
18 GOING TO HAVE TIME TO SHOW YOU THE PHONE ITSELF -- THAT'S ONE
19 OF THOSE WHERE THE WHOLE SCREEN SLIDES TO UNLOCK.

20 APPLE DOES NOT ACCUSE THAT OF INFRINGING.

21 ANOTHER DESIGN SHE CAME UP WITH WAS IN THE GALAXY NOTE
22 WHERE YOU SEE THIS CIRCLE HERE AND YOU MOVE YOUR FINGER OUTSIDE
23 THE CIRCLE AND IT UNLOCKS.

24 APPLE DOES NOT ACCUSE THAT OF INFRINGING.

25 SHE CAME UP WITH THE RIPPLE, THE GALAXY S III, WHERE YOU

1 SLIDE -- YOU SWIPE TO UNLOCK. APPLE DOES NOT ACCUSE THAT OF
2 INFRINGING.

3 IN FACT, THEIR EXPERT TOOK THE STAND -- IF WE CAN GO BACK
4 TO THAT CHART, 47, KEN -- LOOK, THESE ARE COMING OUT BEFORE
5 APPLE'S PATENT IS EVEN ISSUED.

6 AND MR. MCELHINNY CAME UP HERE AND TOLD YOU THAT SAMSUNG
7 COPIED, YOU KNOW, APPLE'S SLIDE TO UNLOCK PATENT. IT DOESN'T
8 MAKE SENSE.

9 AND THEIR OWN EXPERT, MR. COCKBURN, CAME UP HERE AND TOLD
10 YOU THERE IS NO EVIDENCE. AND THIS IS, I BELIEVE, T-281, 2 --
11 KEN, THE COCKBURN TESTIMONY.

12 YOU'RE NOT TALKING ABOUT ANYBODY COPYING THE PATENT;
13 CORRECT?

14 RIGHT.

15 THERE'S NO COPYING IN THIS CASE. THERE WAS A DISCUSSION
16 AND COMPARISON OF THE PHONES. THE CODE WAS CREATED BY THESE
17 INDEPENDENT GENIUSES AT GOOGLE, THE BASIC ANDROID.

18 YOU KNOW, ANY CHANGE THAT SAMSUNG MADE HAD THE EFFECT OF
19 NOT CHANGING THAT, NOT CHANGING THAT BASIC GOOGLE CODE. THERE
20 IS NO COPYING. BUT THEY HAVE TO MAKE YOU THINK THAT SO THAT
21 YOU CAN GET ENRAGED AND THINK THAT THERE SHOULD BE, YOU KNOW,
22 BIG MONEY DAMAGES AWARDED.

23 SO LET ME THEN GO INTO -- AND I ALMOST FORGOT ON THIS --
24 SO WE HAVE, YOU KNOW, GOOGLE, GOOGLE ENGINEERS DEVELOPING THIS
25 CODE. YOU ARE ASKED, WHERE WERE YOU IN 2007, YOU KNOW, WHEN

1 APPLE CAME OUT? AND DIDN'T HAVE -- BY THE WAY, IT WASN'T
2 PRACTICING MOST OF THESE PATENTS, AT THIS POINT ALL OF THEM.

3 THE QUESTION WAS, WHERE WERE THEY, LIKE, IN 2010, 2011?
4 WE KNOW WHAT STEVE JOBS THOUGHT. STEVE JOBS THOUGHT THEY WERE
5 BEHIND ANDROID AT THAT TIME AND HE THOUGHT THAT THEY HAD TO
6 DECLARE A HOLY WAR ON ANDROID, AND THAT'S EXHIBIT 489, AND IF I
7 HAD A BUCK IN MY POCKET, I WOULD GIVE IT TO MR. MCELHINNY,
8 BECAUSE IT'S CRITICAL AS TO WHAT THIS CASE IS REALLY ABOUT.

9 I MEAN, SAMSUNG, MOTOROLA, HTC AND OTHERS CHOSE ANDROID AS
10 A PLATFORM.

11 AND WE KNOW, IN OCTOBER 2010, STEVE JOBS RECOGNIZED WE
12 HAVE TO START A HOLY WAR ON GOOGLE. THAT'S WHAT 2011 WAS GOING
13 TO BE ALL ABOUT. IT WAS THE PRIMARY REASON FOR THESE
14 EXECUTIVES GETTING TOGETHER AND MEETING WAS THIS HOLY WAR.

15 AND IF YOU LOOK THROUGH THIS DOCUMENT -- AND DO FLIP
16 THROUGH IT -- EVERYONE WAS SUPPOSED TO TALK ABOUT GOOGLE AND
17 ANDROID AND IT WAS ALL ABOUT APPLE BEING IN DANGER OF HANGING
18 ON TO AN OLD PARADIGM TOO LONG, AN INNOVATOR'S DILEMMA.

19 GOOGLE AND MICROSOFT WERE FURTHER AHEAD IN TECHNOLOGY. IF
20 YOU GO THROUGH THIS, THEY'RE GOING TO SEE THAT GOOGLE WAS AHEAD
21 IN THE CLOUD, WHICH IS WHERE THE FUTURE WAS GOING, YOU KNOW,
22 WHERE YOU SYNC THROUGH THE CLOUD; THAT GOOGLE WAS AHEAD IN
23 CALENDAR.

24 AND IF YOU KIND OF FLIP THROUGH SOME OF THESE, YES,
25 SAMSUNG IS MENTIONED ALONG WITH GOOGLE, HTC, MOTOROLA, AND RIM.

1 SAMSUNG IS JUST ONE OF THOSE MANUFACTURERS. AT THIS TIME
2 SAMSUNG WAS NOT THE LEADING ANDROID MANUFACTURER.

3 THE FOCUS IS ON WE HAVE A HOLY WAR WITH GOOGLE.

4 AND THEY WERE GOING TO TARGET WHOEVER BECAME THE LARGEST
5 GOOGLE ANDROID SELLER, THE LARGEST COMPANY THAT SOLD THIS
6 INDEPENDENTLY DEVELOPED PLATFORM THAT YOU COULD THEN USE TO
7 DOWNLOAD YOUR APPLICATIONS AND WATCH TV AND DO ALL THAT FUN
8 STUFF.

9 SO HOW DID WE START, HOW DID SAMSUNG START INCREASING ITS
10 SALES? IT WASN'T BECAUSE IT COPIED. IT WASN'T BECAUSE OF FIVE
11 PARTICULAR WAYS OF DOING SOMETHING THAT GOOGLE INDEPENDENTLY
12 DEVELOPED AND WAS DIFFERENT.

13 THE WAY THEY DID IT WAS THEY HAD A PARADIGM SHIFT, AND YOU
14 HEARD FROM MR. SOHN, WHO CAME IN.

15 AND BY THE WAY, THERE'S CRITICISM THAT WE DIDN'T BRING IN
16 EXECUTIVES. WE BROUGHT IN TO YOU THE INVENTORS OF THE ACCUSED
17 FEATURES, WHICH ARE THE GOOGLE ENGINEERS.

18 WE BROUGHT IN TO YOU, IN FOR YOU TO LOOK AT AND LISTEN TO
19 MS. YOUNGMI KIM, WHO WAS IN CHARGE OF THAT SLIDE TO UNLOCK.

20 AND WE BROUGHT TO YOU DALE SOHN, WHO WAS PRESIDENT OF
21 SAMSUNG AMERICA, AND AS YOU SAW ON THE OTHER SLIDES, WAS KEY
22 ADVISER, YOU KNOW, IN KOREA.

23 AND HE EXPLAINED TO YOU THAT THERE WAS A PARADIGM SHIFT
24 FROM WHAT WE REALIZED -- IF WE CAN PUT UP 156.21 -- WE REALIZED
25 THAT WE HAD TO BRAND SAMSUNG, WE HAD TO GET CONSUMERS TO KNOW

1 WHO WE WERE AND TO GO INTO STORES TO ASK FOR THEM.

2 SAMSUNG WAS WELL KNOWN IN TV'S, YOU KNOW, BUT NOT IN
3 PHONES.

4 SO LET'S FOCUS ON BRANDING. LET'S IMPROVE OUR RETAIL
5 PRESENCE. LET'S GO AND CREATE SPECIAL AREAS IN THE RETAILERS.
6 LET'S BE FRIENDLY TO THE RETAILERS IN THIS REGARD. LET'S SHIFT
7 OUR INVESTMENT STRATEGY IN MARKETING SO THAT WE'RE PROMOTING
8 OUR BRAND.

9 AND BY THE WAY, THAT DIDN'T INCREASE OUR ADVERTISING
10 DOLLARS. YOU HEARD MR. PENDLETON, WHO'S HEAD OF MARKETING, SAY
11 IT JUST SWITCHED IT SO THAT SAMSUNG WAS CONTROLLING THE BRAND.

12 AND THEN LET'S MAKE SURE THAT OUR PRODUCTS ARE FLAWLESS.

13 AND MR. PENDLETON CAME UP HERE AND TOLD YOU WHAT THE FOCUS
14 WAS ON, HOW ARE WE SELLING THESE PHONES? WE'RE USING A COMMON
15 PLATFORM, A PLATFORM THAT'S USED BY THE REST OF THE WORLD
16 EXCEPT FOR IOS, SO HOW DO WE SELL SAMSUNG PHONES?

17 BECAUSE AT THAT TIME, HTC WAS SELLING, WHAT, TWICE AS MUCH
18 AS WE WERE OF THE ANDROID PLATFORM.

19 AND HE EXPLAINED TO YOU THAT WE CREATED THESE ADS AND WE,
20 WE FOCUSSED ON OUR LEADERSHIP IN BIG SCREEN, 4G TECHNOLOGY. HE
21 LATER TALKED ABOUT, YOU KNOW, THE QUALITY OF THE SCREEN.

22 IT'S THE HARDWARE THAT DISTINGUISHED US FROM THE REST OF
23 THE WORLD THAT WAS USING THE BASIC GOOGLE ANDROID SOFTWARE.

24 AND IT WORKED. AND THE WAY YOU KNOW IT WORKED IS THAT
25 APPLE LATER STARTED PANICKING. THEY WERE -- FIRST, THE

1 BRANDING WAS WORKING. YOU REMEMBER THAT MR. SCHILLER, WHEN HE
2 WAS ON THE STAND, WE SHOWED HIM AN E-MAIL WHICH HAD THE
3 "WALL STREET JOURNAL" ARTICLE THAT, THAT IS APPLE LOSING ITS
4 COOL TO SAMSUNG AND HE SAID WE'VE GOT TO DO SOMETHING ABOUT
5 THIS.

6 AND THE RESPONSE FROM, FROM THE LEAD ADVERTISING AGENCY,
7 THE ONLY ADVERTISING AGENCY THAT THEY HAD USED FOR, WHAT, EVER,
8 A FELLOW NAMED JAMES VINCENT WAS, AND THIS IS 408A-3, WAS WE'VE
9 GOT TO DO SOMETHING HERE. WHAT CAN WE DO?

10 HE'S TALKING ABOUT THINGS THAT APPLE CAN DO, BIGGER
11 SCREENS, THE APPLE BRAND IS SLIPPING.

12 AND THAT WAS EXACTLY WHAT MR. SOHN WAS TRYING TO DO,
13 CONCENTRATE ON THE HARDWARE AND ON THE BRAND, AND APPLE, AS A
14 RESULT OF THAT, WAS LOSING SALES TO SAMSUNG BECAUSE OF APPLE'S
15 HARDWARE, BECAUSE OF THAT.

16 AND BY THE WAY, JUST BECAUSE I DON'T HAVE TIME TO SHOW
17 THEM TO YOU, IF YOU LOOK AT EXHIBITS 409, 410, AND 498, THERE'S
18 THE STRING OF E-MAILS, YOU KNOW, BETWEEN MR. SCHILLER AND
19 OTHERS TALKING ABOUT WHAT ARE WE GOING TO DO? WE'VE GOT TO DO
20 SOMETHING FAST. WE HAVE TO MAKE DRASTIC CHANGES.

21 BY THE WAY, THEIR DRASTIC CHANGE WAS THAT, IN THAT SUMMER,
22 FOR THE FIRST TIME IN 14 YEARS, I BELIEVE, 15 YEARS, THEY
23 DECIDED TO DO A BRAND CAMPAIGN THEMSELVES, AND THEIR BRAND
24 CAMPAIGN IS PROBABLY ONE OF THE MOST SIMPLE YOU'VE EVER HEARD
25 OF. IT WAS, DESIGNED BY APPLE IN CALIFORNIA, AS OPPOSED TO

1 OURS.

2 SO APPLE, IN THE REAL WORLD, RECOGNIZED WHY SAMSUNG PHONES
3 WERE SELLING, NOT BECAUSE OF APPLE'S ACCUSED PATENTS.

4 ANOTHER WAY YOU KNOW THEY RECOGNIZED WHY WE WERE SELLING
5 IS THEY TOOK APART, THEY DIVISECTED -- THEY DISSECTED THE
6 SAMSUNG PHONES, AND IF YOU LOOK AT 489 AND JUST LOOK THROUGH
7 THAT, THAT'S A NUMBER OF DOCUMENTS THAT SHOWED HOW APPLE WOULD,
8 YOU KNOW, TAKE THINGS APART AND LOOK AT THE WIRES AND GUESS
9 WHERE THE WIRES CAME FROM. EMPLOYEES WOULD GO OUT AND BUY
10 THESE PHONES SO THAT THEY COULD TAKE THEM APART, YOU KNOW, LIKE
11 A FROG.

12 AND THEIR CONCLUSIONS -- IF YOU GO TO PAGE 37 -- WAS --
13 THIS WAS APPLE'S MARKET RESEARCH. THE GOOD, WHY ARE THESE
14 SAMSUNG PHONES GOOD? BEAUTIFUL SCREEN, INSANELY SLIM AND
15 LIGHT, VERY FAST, GREAT CAMERA, ATTRACTIVE DESIGN, ENDLESS
16 FEATURES AND CUSTOMIZATION OPTIONS.

17 BY THE WAY, THE BASIC OPERATING SOFTWARE, THEY DIDN'T
18 THINK SAMSUNG WAS VERY GOOD. THEY SAID WE WEREN'T AS USER
19 FRIENDLY AS HTC AND PHONE RIVALS.

20 SO LET'S TALK ABOUT, BEFORE WE COME TO COURT AND SEEK LOTS
21 OF MONEY FOR THINGS THAT APPLE ITSELF DOES NOT EVEN USE, YOU
22 KNOW, BEFORE WE COME TO COURT, WHAT'S APPLE SAID ITSELF AS TO
23 WHY SAMSUNG IS DOING WELL?

24 NOT BECAUSE OF THESE PARTICULAR WAYS OF DOING PARTICULAR
25 FEATURES, BUT BECAUSE OF WHAT MR. SOHN TOLD YOU, MR. PENDLETON,

1 BECAUSE OF THE BRANDING, BECAUSE OF THE HARDWARE.

2 AND THE FINAL DOCUMENT I'M GOING TO TALK TO YOU ABOUT IS
3 THE OFF SITE THAT TOOK PLACE SHORTLY AFTER THESE E-MAILS OF
4 MR. SCHILLER IN THE SUMMER OF 2012. THIS IS EXHIBIT 413.

5 AND BY THE WAY, THERE WAS A SUGGESTION THAT THIS EXHIBIT
6 WAS DONE BY SOME LONE MADMAN, I THINK MR. SCHILLER WAS
7 BASICALLY TRYING TO GET YOU TO THINK.

8 ACTUALLY, IF YOU LOOK AT EXHIBIT 411, YOU'LL SEE ANOTHER
9 DRAFT OF THIS, WHICH IS DISTRIBUTED WIDELY, AND IT'S CALLED THE
10 OPPENHEIMER IPHONE REVIEW. MR. OPPENHEIMER WAS THEN THE CFO OF
11 APPLE.

12 AND IF WE LOOK AND SEE WHAT THEY RECOGNIZED WAS GOING ON,
13 FIRST THEY RECOGNIZE THAT THEIR IPHONE SALES WERE, THE GROWTH
14 WAS SLOWING. THEY'RE STILL SELLING MORE PHONES THAN ANYBODY.
15 I MEAN, THEY'RE STILL SELLING PHONES AND SELLING OUT EVERY
16 PHONE THEY COME OUT WITH. PEOPLE LIKE APPLE, AND PEOPLE WHO
17 LIKE APPLE LOVE APPLE. RAISE YOUR HAND IF YOU LOVE APPLE. I
18 KNOW THERE ARE A LOT OF YOU ON THE JURY WHO LOVE APPLE.

19 WHY WERE THEY SLOWING? WELL, THEY VIEWED INTERNALLY WHY,
20 HERE'S THEIR INTERNAL VIEW AS TO WHY. LET'S GO TO PAGE 814,
21 HERE WE GO, 814. WHAT'S GOING ON?

22 IT'S BECAUSE THE STRONGEST DEMAND IS COMING FROM LESS
23 EXPENSIVE -- NOT APPLE -- AND LARGE SCREEN SMARTPHONES.
24 EXACTLY WHAT, EVEN BACK THEN IN THAT, QUOTE, "DESIGN OF CRISIS"
25 E-MAIL, EXACTLY WHAT SAMSUNG'S STRATEGY WAS. LET'S TAKE

1 ADVANTAGE OF OUR ADVANTAGE IN THE HARDWARE.

2 AND THEN THE CARRIERS, THE PEOPLE WHO SELL THE PHONES,
3 WERE GETTING SICK OF APPLE. DO YOU KNOW WHY? BECAUSE THOSE
4 PHONES COST APPLE -- I MEAN THE CARRIERS, LIKE, \$700, \$600.
5 WHEN YOU BUY THEM FOR CHEAPER, THE CARRIER IS PAYING A SUBSIDY.
6 IT'S LOSING MONEY.

7 AND THE CARRIERS ARE CAPPING THE SALES BECAUSE OF SUBSIDY
8 PREMIUMS, UNFRIENDLY POLICIES.

9 APPLE IS THOUGHT OF AS BEING ARROGANT.

10 AND THEN WE LOOK AT THE LAST ONE. THE COMPETITORS -- AND
11 BY THE WAY, YOU SEE THIS ISN'T SAMSUNG HERE, IT'S ANDROID,
12 BECAUSE THAT'S WHO THE HOLY WAR IS AGAINST BY THE WAY.

13 AND COMPETITORS HAVE DRASTICALLY IMPROVED THEIR HARDWARE
14 AND IN SOME CASES THEIR ECOSYSTEMS, WHICH IS, YOU KNOW, AGAIN,
15 THOSE GREAT APPLICATIONS YOU HAVE AND THE GOOGLE APPS AND LIKE
16 THE SAMSUNG HUB AND THINGS LIKE THAT, YOU KNOW?

17 IT SAYS SPENDING OBSCENE AMOUNTS, BUT ACTUALLY WE WERE
18 SPENDING THE SAME AMOUNT, JUST DOING IT BETTER.

19 AND SO THEIR FINAL CONCLUSION, APPLE'S INTERNAL VERDICT AS
20 TO WHY WE WERE SELLING PHONES, THEY COME IN HERE AND THEY SAY
21 THAT CONSUMERS WANTED SAMSUNG PHONES BECAUSE SAMSUNG COPIED
22 APPLE.

23 THAT WAS NOT THEIR INTERNAL VERDICT. THEIR INTERNAL
24 VERDICT -- AND THIS IS PAGE -- BRING ME BACK -- 46?

25 MR. KOTARSKI: 46.

1 MR. PRICE: 46, THEIR CONCLUSION, "CONSUMERS WANT
2 WHAT WE DON'T HAVE."

3 WHERE DID THE GROWTH COME FROM? IT'S COMING FROM WHAT
4 APPLE DOES NOT HAVE, NOT FROM WHAT APPLE DOES HAVE AND SOMEONE
5 ELSE COPIED. THAT'S THE REAL WORLD, NOT THE MADE-UP WORLD.

6 AND BY THE WAY, ANOTHER REAL WORLD, JUST ONE QUICK REAL
7 WORLD, THE GALAXY NOTE 2 AND GALAXY S III, APPLE ADMITS, YOU
8 KNOW, DIDN'T INFRINGE TWO OF THE PATENTS, THE KEYBOARD AND
9 SLIDE TO UNLOCK.

10 THOSE TWO PHONES -- AND KEN, CAN I HAVE SLIDE 21 -- THOSE
11 TWO PHONES SOLD MORE THAN ALL OTHER PHONES COMBINED THAT ARE
12 ACCUSED IN THIS CASE. THE FEWER THE NUMBER OF PATENTS THAT
13 THEY CLAIM ARE INFRINGING, THE LARGER SAMSUNG'S SALES. THAT
14 DOESN'T MAKE SENSE. SAMSUNG'S SUCCESS IS BECAUSE OF ITS
15 HARDWARE AND INNOVATION AND HARD WORK. THIS IS A MADE UP CASE.

16 AND NOW I'LL LET MR. NELSON TALK TO YOU ABOUT THAT.

17 **(MR. NELSON GAVE HIS CLOSING ARGUMENT ON BEHALF OF THE**
18 **DEFENDANTS.)**

19 MR. NELSON: GOOD MORNING, EVERYBODY.

20 JURORS: GOOD MORNING.

21 MR. NELSON: SO YOU MIGHT HAVE GUESSED THAT I'D BE
22 TALKING TO YOU ABOUT THE PATENTS. I'VE HAD THE OPPORTUNITY,
23 OVER THE LAST MONTH, TO TALK TO A LOT OF THE WITNESSES ABOUT
24 THE PATENTS, BUT I HAVEN'T HAD A CHANCE TO TALK TO YOU YET
25 ABOUT THE PATENTS AND THAT'S WHAT I'M GOING TO DO HERE.

1 THESE FIVE PATENTS -- IF WE COULD PUT BACK UP SLIDE 18,
2 MR. KOTARSKI -- I WANT TO TALK ABOUT THESE PATENTS.

3 AND BEFORE I GET INTO THIS, I WANT TO CLEAR UP ONE THING
4 THAT APPLE COUNSEL SAID. HE TOLD YOU THAT THEY BROUGHT IN A
5 NUMBER OF INVENTORS ON THESE PATENTS TO TESTIFY.

6 THAT NUMBER IS ONE. THAT'S WHO CAME IN. HE TOLD YOU THEY
7 BROUGHT IN MR. MILLET AND MR. DENIAU AND ONE OTHER GENTLEMAN,
8 MR. GARCIA. NONE OF THOSE PEOPLE -- YOU'LL HAVE THE PATENTS
9 BACK THERE. LOOK. NONE OF THOSE PEOPLE ARE NAMED INVENTORS ON
10 THOSE PATENTS. THEY BROUGHT TO YOU ONE, THAT WAS THEIR SECOND
11 WITNESS, MR. CHRISTIE. THAT WAS IT. AND HE'S A NAMED INVENTOR
12 ON THE '721 PATENT. THAT'S ALL.

13 SO THE -- THAT MEANS THERE'S 14 -- THERE WERE 14 TOTAL.
14 THAT'S 13 APPLE PEOPLE THAT DIDN'T COME AND TESTIFY TO YOU. SO
15 OTHER THAN THE '721 PATENT, YOU HAVEN'T HEARD FROM ANY OF THEIR
16 FOLKS.

17 SO LET ME TELL YOU FIRST, BECAUSE YOU'VE HEARD A LOT ABOUT
18 WHAT APPLE DOESN'T WANT YOU TO DO, BUT LET ME TELL YOU WHAT YOU
19 ARE HERE TO DO.

20 AND IF WE COULD PUT UP JURY INSTRUCTION 18.

21 NOW, YOU'VE HEARD, AND WE'VE HEARD THROUGHOUT THIS CASE,
22 THAT THE COURT DETERMINED THAT ONE OF THE PATENTS, THE '172
23 PATENT, WITH CERTAIN MODELS WAS INFRINGED. WE KNOW THAT. THAT
24 HASN'T BEEN A SECRET. APPLE HAS SAID THAT OVER AND OVER AGAIN.

25 BUT YOU KNOW WHAT THAT MEANS? THE OTHER FOUR PATENTS, THE

1 COURT DECIDED THAT'S UP TO YOU. THAT'S UP TO YOU TO DECIDE,
2 AND THAT'S RIGHT HERE IN THE INSTRUCTION.

3 AND YOU KNOW WHAT ELSE THE COURT SAID IS ALL FIVE OF THE
4 PATENT CLAIMS ON THE VALIDITY, THAT'S UP FOR YOU -- UP TO YOU
5 TO DECIDE.

6 SO, LOOK, APPLE KEEPS TELLING YOU, THEY'VE DONE IT WITH A
7 NUMBER OF WITNESSES, THE PATENT OFFICE ALREADY LOOKED AT THESE
8 THINGS. RIGHT? YOU CAN'T SECOND GUESS THE PATENT EXAMINER.

9 BUT THAT'S JUST NOT THE WAY THE SYSTEM WORKS. IN FACT,
10 YOU KNOW HOW OUR GOVERNMENT -- WE HAVE CHECKS AND BALANCES.
11 WHEN ONE BRANCH DOES SOMETHING, WE HAVE SOMEBODY ELSE THAT
12 CHECKS IT.

13 THAT'S EXACTLY WHAT THE JURY SYSTEM IS WITH RESPECT TO
14 PATENTS, RIGHT? THAT'S WHAT YOU'RE SUPPOSED TO DO. YOU'VE GOT
15 TO HELP OUT THE PATENT OFFICE.

16 THE PATENT OFFICE DOESN'T HAVE THE OPPORTUNITY TO HEAR
17 FROM US THE OTHER SIDE OF THE STORY. THEY DON'T HAVE THE
18 OPPORTUNITY TO SEE ALL THE ART. THERE'S THREE OF THESE PATENTS
19 I'M GOING TO TALK TO YOU ABOUT THAT THE PATENT OFFICE NEVER SAW
20 ANY OF THESE THINGS.

21 AND THEN THE OTHER TWO PATENTS WHERE COUNSEL KIND OF BEAT
22 ME UP WHERE COUNSEL SAID THE PATENT OFFICE SAW THIS, THEY NEVER
23 SAW THE COMBINATION THAT WE PRESENTED.

24 AND FURTHERMORE, THERE WAS NOBODY THERE TO PRESENT THE
25 OTHER SIDE OF THE STORY.

1 SO YOU WON'T GET A JURY INSTRUCTION -- YOU CAN GO BACK AND
2 LOOK IN THERE. GO LOOK THROUGH THOSE JURY INSTRUCTIONS. NONE
3 OF THEM WILL SAY, OH, DEFER TO THE PATENT OFFICE. IF THERE WAS
4 SOMETHING THAT WAS IN FRONT OF THE PATENT OFFICE, DON'T GIVE IT
5 CONSIDERATION. DON'T LOOK AT IT. THERE'S NO SUCH INSTRUCTION
6 BECAUSE THAT'S NOT THE LAW.

7 AND, IN FACT, IT'S NOT JUST HER HONOR THAT HAS SAID THAT.
8 WE SAW -- REMEMBER THIS PATENT VIDEO AT THE VERY BEGINNING OF
9 THE CASE WHERE THERE WAS, LIKE, AN INTRODUCTION INTO THE PATENT
10 SYSTEM? WELL, JUDGE FOGEL WAS THE GENTLEMAN THERE AND HE SAID
11 THAT OF COURSE WE NEED THIS SYSTEM BECAUSE THE PATENT OFFICE
12 MAKES MISTAKE. THINGS ARE OVERLOOKED.

13 SO IT'S VERY IMPORTANT, LADIES AND GENTLEMEN, THAT YOU
14 CONSIDER THE EVIDENCE THAT I'M GOING TO WALK THROUGH AND
15 PRESENT TO YOU, NOT SIMPLY LISTEN TO WHAT APPLE IS TELLING YOU
16 AND DON'T GIVE IT ANY CREDENCE. THAT'S WHAT I'M ASKING YOU TO
17 DO.

18 THAT'S WHAT THIS CASE IS ABOUT. WE'RE ENTITLED TO COME
19 HERE AND DEFEND OURSELVES WHEN WE'RE ACCUSED. WE DON'T HAVE TO
20 JUST SAY, WHATEVER YOU SAY, APPLE. WE'RE ENTITLED TO COME IN
21 AND PRESENT OUR CASE, AND THAT'S EXACTLY WHAT WE'VE DONE, AND
22 WHEN YOU GO BACK INTO THAT ROOM WHEN I WALK YOU THROUGH THIS
23 EVIDENCE, THAT'S ALL I CAN ASK YOU TO DO IS CONSIDER WHAT I'VE
24 PRESENTED TO YOU.

25 SO LET'S ALSO LOOK AT JURY INSTRUCTION NUMBER 24, AND THIS

1 I WANT TO CLEAR UP A LITTLE BIT BECAUSE IT MIGHT BE A LITTLE
2 BIT CONFUSING.

3 YOU KNOW, YOU'VE HEARD A LOT OF TALK ABOUT THE IPHONE AND
4 PEOPLE LOOKING AT THE IPHONE.

5 NOW, MR. PRICE HAS ALREADY ADDRESSED THAT, THAT THESE
6 PATENTS AREN'T IN, I MEAN, THE IPHONE FOR THE MOST PART.

7 BUT -- OH, I HAVE A LASER POINTER NOW.

8 SO -- BUT THAT'S NOT INFRINGEMENT -- THAT'S NOT HOW YOU
9 DEAL WITH INFRINGEMENT AND INVALIDITY. YOU DON'T COMPARE THE
10 PRODUCT TO THE PRODUCT.

11 AND, IN FACT, WE KNOW WE COULDN'T BECAUSE THE IPHONE
12 DOESN'T PRACTICE MOST OF THESE PATENTS.

13 IT'S THE CLAIMS OF THE PATENTS THAT MATTER, AND IT'S EVERY
14 WORD HERE THAT MATTERS. WHEN WE'RE LOOKING AT INFRINGEMENT, WE
15 DON'T GET TO READ THINGS OUT. RIGHT? WE DON'T SAY, AH, THAT'S
16 KIND OF CLOSE. RIGHT? THAT'S NOT THE WAY IT WORKS.

17 AND THE OTHER THING THAT'S IMPORTANT IS WHEN WE TURN
18 AROUND AND WE LOOK AT THE PRIOR ART AND WE'RE COMPARING THE
19 PRIOR ART TO THE PATENT CLAIMS, WE DON'T PUT NEW WORDS IN.
20 RIGHT? IT'S GOT TO BE THE SAME BOTH WAYS, AND THAT'S VERY
21 IMPORTANT. THAT'S A THEME THAT YOU'RE GOING TO SEE AS I WALK
22 THROUGH THIS EVIDENCE, BECAUSE I THINK APPLE IS TRYING TO PLAY
23 IT BOTH WAYS.

24 SO LET ME FIRST TALK ABOUT THIS ANALYZER SERVER PATENT.
25 THAT'S THE '647 PATENT. THAT'S WHERE WE LEFT OFF YESTERDAY, SO

1 I FIGURED THAT WOULD BE FRESHEST IN EVERYBODY'S MIND AND LET'S
2 PICK UP THERE.

3 NOW, THERE ARE TWO INDEPENDENT REASONS THAT I'M GOING TO
4 GIVE YOU WHY THESE DEVICES DON'T INFRINGE, AND I'M GOING TO
5 WALK YOU THROUGH THAT EVIDENCE. WE PRESENTED ADDITIONAL
6 THINGS, BUT I WANT TO OUTLINE TWO FOR YOU HERE TODAY, AND I'M
7 GOING TO TALK ABOUT ONE PRIOR ART REFERENCE ABOUT WHY THAT'S
8 INVENTIVE.

9 I WON'T WALK YOU THROUGH THE JURY VERDICT FORM.
10 MR. MCELHINNY ALREADY DID THAT. HE -- I MEAN, IT'S PROBABLY
11 APPARENT THAT WHERE HE SAYS TO SAY YES, I SAY NO. RIGHT?
12 WHERE HE SAYS NO, I SAY YES.

13 (LAUGHTER.)

14 MR. NELSON: NOW, LET'S TALK ABOUT THIS ANALYZER
15 SERVER, OKAY? THAT'S A LIMITATION OF THE CLAIM. IT'S
16 REQUIRED, AN ANALYZER SERVER FOR DETECTING STRUCTURES IN THE
17 DATA.

18 NOW, YOU REMEMBER, THROUGH THIS CASE, IT REALLY SEEMED
19 LIKE APPLE WAS TRYING TO READ THAT LIMITATION OUT OF THE CLAIM.
20 THEY WERE TRYING TO GIVE IT NO MEANING, ANALYZER SERVER, IT'S
21 JUST A PIECE OF SOFTWARE.

22 BUT THE COURT GAVE US A CONSTRUCTION YESTERDAY MORNING
23 YOU'LL RECALL. AND ANALYZER SERVER MEANS SOMETHING, AND IT
24 MEANS SOMETHING VERY IMPORTANT. IT'S "A SERVER ROUTINE
25 SEPARATE FROM THE CLIENT THAT RECEIVES DATA HAVING STRUCTURES

1 FROM THE CLIENT."

2 SO WE KNOW THAT TO HAVE AN ANALYZER SERVER, YOU'VE GOT TO
3 HAVE AT LEAST TWO THINGS. RIGHT? BECAUSE YOU'VE GOT TO HAVE A
4 SERVER, AND YOU'VE GOT TO HAVE A CLIENT, AND THE TWO OF THEM
5 HAVE TO BE SEPARATE. RIGHT? THAT'S WHAT THE COURT SAYS THAT'S
6 WHAT SERVER MEANS, ANALYZER SERVER MEANS.

7 SO LET'S TALK ABOUT WHAT WE HEARD ABOUT THAT. WE BROUGHT
8 IN THE FOLKS THAT ACTUALLY WROTE THAT CODE. YOU RECALL SOME
9 DISCUSSION ABOUT THE FRAMEWORK CODE AND THE SHARED LIBRARIES.

10 MS. HACKBORN FROM GOOGLE, SHE CAME RELATIVELY EARLY ON OUR
11 SIDE OF THE CASE, SHE ACTUALLY WROTE THAT LINKIFY CODE, AND WE
12 ASKED HER, DID YOU IMPLEMENT IT AS A SERVER?

13 NO, I DIDN'T.

14 IT WASN'T IMPLEMENTED AS A SERVER, AND SHE TOLD YOU WHY
15 THAT WAS. IT'S BECAUSE IT DIDN'T NEED TO SHARE DATA ACROSS
16 APPLICATIONS.

17 NOW, WHO ELSE DID WE HEAR FROM ABOUT THIS SHARED LIBRARY
18 ISSUE? WELL, HERE IS ONE OF THE INVENTORS. APPLE DIDN'T BRING
19 HIM INTO COURT TO TESTIFY. WE SHOWED YOU HIS DEPOSITION.
20 RIGHT? WE SHOWED YOU THAT DEPOSITION TESTIMONY.

21 AND COUNSEL REFERENCED THIS DX EXHIBIT 334. THAT'S THAT
22 SERIES OF E-MAILS WE TALKED ABOUT A FEW TIMES. I WANT YOU TO
23 GO BACK AND LOOK AT THAT AND I WANT YOU TO READ THAT VERY
24 CAREFULLY. I'M NOT AFRAID OF THOSE DOCUMENTS, BECAUSE WHEN YOU
25 READ THAT DOCUMENT, WHICH IS WHY I PUT THAT DOCUMENT INTO

1 EVIDENCE, YOU'LL SEE SOMETHING VERY, VERY IMPORTANT, WHICH IS
2 THAT AT THE TIME APPLE FILED THIS PATENT, OKAY -- THIS IS
3 FEBRUARY OF 1996 -- THE ONLY THING THAT THEY HAD EVER
4 COMPLIMENTED -- OR IMPL -- CONTEMPLATED, THAT'S THE WORD I WAS
5 LOOKING FOR, IS IMPLEMENTING THIS AS A SERVER. THEY CALL IT A
6 FIRST CLASS APPLICATION, AND THAT MEANS SOMETHING THAT CAN
7 STAND ALONE, RIGHT, BE BY ITSELF.

8 AND, SURE, LATER THERE WAS TALK, BECAUSE IF YOU LOOK
9 THROUGH THOSE E-MAILS, THERE WAS SOME TALK ABOUT SOME PROBLEMS
10 WITH PERFORMANCE BECAUSE OF OVERHEAD AND ISSUES LIKE THAT.

11 SO NOW THERE WAS, MUCH LATER, A DIFFERENT PROPOSAL THAT
12 WAS MADE, MAYBE WE SHOULD ELIMINATE AND WE SHOULD BUILD THAT
13 FUNCTIONALITY INTO THE APPLICATION ITSELF. RIGHT? THAT WOULD
14 BE THE SHARED LIBRARY.

15 BUT IF YOU LOOK AT WHEN THAT'S SUGGESTED, THAT IS EIGHT
16 MONTHS AFTER THE PATENT IS FILED. RIGHT? EIGHT MONTHS AFTER.

17 THIS PATENT CLAIMS AN ANALYZER SERVER. IT DOESN'T TALK
18 ABOUT SHARED LIBRARIES. IT DOESN'T TALK ABOUT IMPLEMENTING THE
19 FUNCTIONS THAT ARE REQUIRED HERE OF THE ANALYZER SERVER IN THE
20 APPLICATION ITSELF.

21 THE FACT THAT THE INVENTORS MAY LATER HAVE DECIDED, WELL,
22 THERE'S SOME PROBLEMS WITH THAT, SO MAYBE I'M GOING TO TRY TO
23 CHANGE IT, THAT'S VERY IMPORTANT BECAUSE THAT -- ONE, WE KNOW
24 IT CAN'T MAKE ITS WAY INTO THE PATENT BECAUSE THE PATENT WAS
25 FILED EIGHT MONTHS BEFORE. RIGHT?

1 THE SECOND THING WE KNOW IS IT ISN'T IN THE PATENT.
2 RIGHT? THIS IS WHERE THE WORDS BECOME VERY IMPORTANT. IT SAYS
3 AN ANALYZER SERVER. IT DOESN'T SAY PUT THAT FUNCTIONALITY IN
4 THE APPLICATION ITSELF. RIGHT?

5 IT'S VERY, VERY IMPORTANT, LADIES AND GENTLEMEN, SO GO
6 BACK AND LOOK AT THAT AND CONSIDER THAT TESTIMONY THAT WE
7 PRESENTED TO YOU FROM DR. BONHURA.

8 APPLE DIDN'T BRING TO YOU ONE SINGLE INVENTOR FOR THE '647
9 PATENT. NOBODY CAME IN HERE AND SAT IN THAT STAND AND TOLD YOU
10 WHAT THIS INVENTION WAS ABOUT AND HOW THEY CAME UP WITH IT,
11 WHAT IT WASN'T AND WHAT IT WASN'T.

12 SO WHO ELSE DID WE HEAR FROM ABOUT THIS? CERTAINLY WE
13 HEARD FROM SAMSUNG'S EXPERT, RIGHT, AND HE EXPLAINED EXACTLY
14 WHAT I JUST DESCRIBED TO YOU, THAT THIS LIBRARY CODE THAT
15 THEY'RE ACCUSING OF INFRINGEMENT, IT'S NOT JUST PART OF THE
16 APPLICATION. IT IS THE APPLICATION. RIGHT?

17 WHO ELSE DID WE HEAR FROM? WE -- THIS IS YESTERDAY.
18 YOU'LL RECALL ME ASKING APPLE'S EXPERT ABOUT THIS LINKIFY,
19 THAT'S THE SHARED LIBRARY THAT THEY'RE ACCUSING IN THE
20 MESSENGER APPLICATION, AND HE ADMITS THAT IT CAN'T RUN AS A
21 STANDALONE APPLICATION, RIGHT? IT CAN'T RUN BY ITSELF.

22 SO THERE'S NOTHING SEPARATE -- REMEMBER WHAT HE SAID? AND
23 I ASKED HIM VERY -- WHAT IS THE CLIENT?

24 WELL, THAT'S THE MESSENGER APPLICATION.

25 WHAT IS THE -- THE MESSENGER APPLICATION WITH THE BROWSER,

1 YOU KNOW, WE HAD THE BROWSER APPLICATION. RIGHT? THAT'S WHAT
2 HE SAID. AND HE FREELY ADMITTED, THOSE ARE ONE SINGLE
3 APPLICATION.

4 SO WE KNOW FROM THE COURT'S CONSTRUCTION, WE NEED TWO
5 SEPARATE THINGS. RIGHT? TWO SEPARATE THINGS.

6 WE HAVE ONE. THEIR EXPERT SAYS THERE'S JUST ONE THING,
7 THE ONE APPLICATION.

8 AND WHAT GOOGLE DID HERE, AND WHAT'S BEEN DONE WITH THESE,
9 IS TO PUT THE FUNCTIONALITY IN THE APPLICATION, ELIMINATE THE
10 OVERHEAD, DON'T USE AN ANALYZER SERVER.

11 SO -- AND THINK ABOUT IT, LADIES AND GENTLEMEN. DOES IT
12 REALLY MAKE SENSE? WE HAVE A CONSTRUCTION NOW -- THROUGHOUT
13 THE TRIAL, THEY'RE TRYING TO READ NO MEANING INTO THE ANALYZER
14 SERVER, BUT WE HAVE A CONSTRUCTION THAT SAYS WE NEED TWO
15 SEPARATE THINGS.

16 SO WHAT'S YOUR ANSWER TO THAT? WELL, I POINTED TO THE ONE
17 THING, THE APPLICATION.

18 BUT REALLY, IF YOU LOOK IN THERE, I COULD KIND OF PULL IT
19 APART AND THAT WOULD BE TWO SEPARATE THINGS.

20 IT DOESN'T MAKE ANY SENSE.

21 NOW, THE OTHER REASON I WANT TO TALK TO YOU ABOUT -- THIS
22 IS TIED TO THE COURT'S CONSTRUCTION AS WELL -- THIS LINKING
23 ACTIONS TO DETECTED STRUCTURES, AND YOU HEARD, IN HIS FIRST
24 TIME AROUND FROM SAMSUNG'S EXPERT, ABOUT WHY THE ACTION
25 PROCESSOR LIMITATION WASN'T MET BECAUSE THERE WERE NO LINKED

1 ACTIONS TO DETECTED STRUCTURES.

2 I MEAN, WE SEE HERE THE ACTION PROCESSOR FOR PERFORMING
3 THE SELECTED ACTION LINKED TO THE SELECTED STRUCTURE, MEANING
4 IT'S GOT TO BE WHAT THE ANALYZER SERVER LINKS TO THAT DETECTED
5 STRUCTURE. RIGHT?

6 AND IN ANDROID -- REMEMBER, WE HEARD FROM MS. HACKBORN,
7 ONCE AGAIN, THAT ANDROID WAS DESIGNED VERY DIFFERENTLY, WITH
8 THIS INTENTS SYSTEM. THIS IS AN IDEA SHE HAD FROM THE
9 BEGINNING, AND THAT WAS TO MAKE IT FLEXIBLE, RIGHT, SO THAT YOU
10 COULD BRING WHATEVER APPLICATION YOU WANTED. YOU WOULDN'T HAVE
11 THESE SPECIFIED CONNECTIONS MADE. RIGHT?

12 THAT WAS A DESIGN CHOICE. IT WAS WHAT THEY WANTED.
13 BECAUSE, REMEMBER, IT'S AN OPEN PLATFORM. RIGHT?

14 SO FOR THAT REASON -- AND DR. JEFFAY CAME IN AND EXPLAINED
15 TO YOU WHY THAT WAS DIFFERENT. YOU CAN SELECT, YOU KNOW, AN
16 ACTION -- OR EXCUSE ME -- YOU PUT, SAY, AN E-MAIL IS A GOOD
17 EXAMPLE BECAUSE YOU MIGHT HAVE A CORPORATE E-MAIL AND YOU MIGHT
18 HAVE A PERSONAL E-MAIL, SO YOU TOUCH ON AN E-MAIL ADDRESS, AND
19 ONE OF THE THINGS YOU MIGHT WANT TO DO IS SEND.

20 WELL, YOU KNOW, YOU HAVE THOSE THINGS AND IT'S GOING TO
21 ASK YOU, WHICH ONE DO YOU WANT? AND PART OF THAT REASON IS
22 BECAUSE IT'S FLEXIBLE. YOU CAN RUN THE APPLICATIONS YOU WANT.
23 SO THERE IS NO SPECIFIED CONNECTION.

24 WHAT'S APPLE'S RESPONSE TO THAT? I DON'T KNOW BECAUSE I
25 DIDN'T UNDERSTAND ANYTHING THAT THEIR EXPERT WAS SAYING

1 YESTERDAY. I DIDN'T UNDERSTAND IT. HE TALKED ABOUT A BUNCH OF
2 CODE AND SAID THIS DOES THIS AND THIS CALLS THIS. HE NEVER
3 EXPLAINED TO US IN ENGLISH WHY THAT WAS THE CASE, WHY IS THERE
4 A SPECIFIED CONNECTION.

5 SO ONCE AGAIN, THIS IS APPLE'S BURDEN OF PROOF, LADIES AND
6 GENTLEMEN, AND THEY DIDN'T EXPLAIN IT TO YOU.

7 WE DID. WE EXPLAINED TO YOU WHY IT'S NOT THERE. IT'S NOT
8 THERE.

9 SO IF YOU FIND EITHER OF THOSE REASONS, THEN YOU FIND IN
10 OUR FAVOR. RIGHT? I DON'T HAVE TO PROVE BOTH. IT'S JUST ONE
11 OR THE OTHER, BECAUSE EVERYTHING MATTERS.

12 SO NOW I WANT TO TALK ABOUT THE PRIOR ART THAT WE BROUGHT
13 WITH RESPECT TO THIS PATENT, AND YOU'LL RECALL THAT WE BROUGHT
14 MR. LARS FRID-NIELSEN, THE GENTLEMAN FROM DENMARK WHO DESIGNED
15 THIS SYSTEM. AND THIS SYSTEM, REMEMBER, WAS 1985. THAT'S 11
16 YEARS BEFORE THE PATENT CAME OUT.

17 AND APPLE, YOU KNOW, THEY SAY, WELL, WAIT A MINUTE, THIS
18 DOESN'T DO A FEW THINGS, ONE OF THE THINGS BEING THE POP-UP
19 MENU WHICH I'LL ADDRESS IN A MOMENT.

20 ANOTHER THING IS, WELL, IT DOESN'T DETECT MULTIPLE
21 STRUCTURES. REMEMBER THEY SAID THAT?

22 WELL, WE KNOW FROM THIS THAT WE'RE LOOKING AT HERE,
23 DX 332, THE -- THERE ARE DIFFERENT STRUCTURES HERE, DIFFERENT
24 TYPES OF PHONE NUMBERS BECAUSE ONE HAS A PARENTHESES AROUND IT
25 AND ANOTHER ONE JUST HAS THE DASHES.

1 AND YOU'LL RECALL, WHEN YOU LOOKED AT THE CODE, HOW
2 APPLE'S EXPERT -- REMEMBER, THEY PUT THAT CODE UP FROM THE
3 SIDEKICK CODE AND IT HAD SET 1 AND ONE PATTERN AND IT HAD SET 2
4 IN ANOTHER PATTERN AND SET 3, AND HE SAID, OH, THOSE ARE ALL
5 ONE PATTERN.

6 WELL, THEY'RE NOT. THEY'RE DIFFERENT PATTERNS. RIGHT?

7 AND THAT'S THE POINT, BECAUSE AS THAT TESTIMONY THAT I
8 POINTED OUT TO YOU YESTERDAY FROM THEIR EXPERT, HE ACTUALLY
9 DEFINED, THE FIRST TIME HE CAME UP ON THE STAND, AND SAID EVERY
10 TIME WE HAVE A DIFFERENT PATTERN, YOU'VE GOT A DIFFERENT
11 STRUCTURE. RIGHT? SO THERE ARE MULTIPLE STRUCTURES.

12 WHAT'S THE OTHER THING THEY SAID? WELL, THE OTHER THING
13 THEY SAID IS, WELL, IT DOESN'T DO MULTIPLE ACTIONS.

14 BUT WE KNOW FROM THE CONSTRUCTION THAT THE COURT GAVE US,
15 THAT'S NOT REQUIRED. IT'S AT LEAST ONE. RIGHT? AND I CAN PUT
16 THAT CONSTRUCTION UP. THIS IS THE LINKING ACTIONS
17 CONSTRUCTION.

18 WE'LL PUT THAT BACK ON THE SCREEN, PLEASE.

19 SEE, CREATING A SPECIFIED CONNECTION BETWEEN EACH DETECTED
20 STRUCTURE -- EXCUSE ME -- AND AT LEAST ONE COMPUTER SUBROUTINE.
21 RIGHT? IT DOESN'T SAY MULTIPLE ONES BECAUSE YOU CAN HAVE
22 ACTIONS, YOU HAVE MULTIPLE STRUCTURES, YOU HAVE AN ACTION
23 LINKED TO ONE STRUCTURE, YOU HAVE AN ACTION LINKED TO ANOTHER
24 STRUCTURE, YOU HAVE ACTIONS. RIGHT? THERE'S NOTHING IN HERE
25 ABOUT THEY HAVE TO BE DIFFERENT TYPES OF ACTIONS. THERE'S NONE

1 OF THAT.

2 NOW, THE LAST THING THAT APPLE TALKS ABOUT IS THIS POP-UP
3 MENU. RIGHT? AND THEY SAID, WELL, THERE'S NOTHING IN THE
4 POP-UP MENU.

5 BUT, REMEMBER, THIS WAS 1985. RIGHT? 1985. AND SIDEKICK
6 ITSELF, AS WE DEMONSTRATED TO YOU, HAD POP-UP MENU IN IT. IT
7 JUST DIDN'T USE IT FOR THIS DIALER FUNCTIONALITY.

8 SO THINK ABOUT THIS, LADIES AND GENTLEMEN: APPLE'S
9 BASICALLY SAYING, WELL, SIDEKICK HAD ONE, RIGHT, STRUCTURED
10 ACTION. IT DIDN'T HAVE TWO. SIDEKICK DID POP-UP MENUS OTHER
11 PLACES, BUT IT DIDN'T DO THEM WITH RESPECT TO THE MENU THAT
12 SHOWS YOU THE ACTION.

13 THEY NEVER BROUGHT TO YOU AN INVENTOR TO SAY, HEY, WAIT A
14 MINUTE, THIS IS WHY IT WAS HARD TO DO TWO AND NOT ONE. RIGHT?
15 SOMEBODY ELSE ALREADY DID ONE. THIS WAS WHY IT WAS HARDER TO
16 DO TWO.

17 THEY DIDN'T BRING YOU SOMEBODY TO SAY, EUREKA, THAT'S WHAT
18 I WAS WORKING ON.

19 THEY DIDN'T BRING TO YOU SOMEBODY, ONE OF THE INVENTORS
20 THAT SAID, HEY, WAIT A MINUTE, THIS IS WHY IT WAS HARD TO
21 IMPLEMENT THIS AS A POP-UP MENU. THEY NEVER DID THAT.

22 SO LADIES AND GENTLEMEN, THAT'S THE PATENT OFFICE.

23 NOW I WANT TO MOVE TO THE '959 PATENT, AND SOMEBODY IS
24 GOING TO -- THE CLAIMS ARE ALWAYS GOING TO BE UP HERE BECAUSE,
25 ONE, I WANT TO REFERENCE THEM AND, TWO, THEY'RE VERY IMPORTANT

1 BECAUSE THAT'S WHAT WE'RE HERE FOR.

2 SO HERE, ON THE '959 PATENT, THIS IS THE HEURISTICS TO
3 LOCATE INFORMATION. YOU'LL RECALL, RIGHT, THAT'S WHAT THIS
4 PATENT IS.

5 AND HERE'S WHAT I WANT TO FOCUS ON. THERE'S TWO THINGS
6 THAT I'M GOING TO WALK THROUGH HERE TODAY AND GIVE YOU THE MAP.
7 I'M GOING TO WALK THROUGH WHY THERE'S NO INFRINGEMENT, BECAUSE
8 THERE IS NO HEURISTIC, THAT THERE'S NO HEURISTIC TO LOCATE
9 INFORMATION ON THE INTERNET. RIGHT? THAT'S NOT THERE IN THE
10 ACCUSED GOOGLE SEARCH APPLICATION.

11 AND I'M ALSO GOING TO WALK YOU THROUGH THE WAIS PRIOR ART,
12 THE FREEWAIS SF PRIOR ART. OKAY?

13 AND SO FIRST, BEFORE I DO THAT, I SHOULD REMIND YOU,
14 SIDEKICK, PATENT OFFICE DIDN'T HAVE IT.

15 FREEWAIS PRIOR ART? THE PATENT OFFICE DIDN'T HAVE IT. NO
16 DISPUTE ABOUT THAT.

17 NOW, LET'S GO TO THE NEXT SLIDE, MR. KOTARSKI.

18 NOW, HERE I JUST WANT TO REMIND YOU A LITTLE BIT, THIS WAS
19 TRUE WITH THE LAST PATENT I TALKED ABOUT, THE '647, AND IT'S
20 TRUE WITH THE '959 PATENT. YOU'VE HEARD A LOT FROM APPLE'S
21 COUNSEL ABOUT THE IPHONE, 2007, THIS WAS WHERE EVERYTHING CAME
22 FROM.

23 WELL, WE'VE ALREADY SEEN THAT MOST OF THESE PATENTS AREN'T
24 USED IN THE IPHONE.

25 BUT WE ALSO KNOW THE '647, 1996, THERE'S NO IPHONE AROUND.

1 THIS HAS NOTHING TO DO WITH THE IPHONE.

2 WE ALSO KNOW -- AS MR. PRICE SAID, YOU DIDN'T HEAR ONE
3 SHRED OF EXPERT TESTIMONY. WE HEARD ALL ABOUT THE CODE AND THE
4 STRUCTURE OF THE CODE FROM THE '647. DO YOU RECALL THAT? YOU
5 DIDN'T HEAR ONE WORD FROM THEIR EXPERT ABOUT HOW APPLE DOES IT.
6 RIGHT? YOU DON'T HAVE ANY BASIS TO CONCLUDE THAT THAT'S THE
7 CASE. I'M NOT SURE WHY. I DON'T KNOW WHY THEY DIDN'T WANT TO
8 TELL US.

9 NOW LET'S TALK ABOUT THIS '959 PATENT. AGAIN, IF YOU LOOK
10 AT THAT PATENT, IT DOESN'T TALK ABOUT MOBILE PHONES, MOBILE
11 DEVICES. IT TALKS ABOUT DESKTOP COMPUTERS. RIGHT? THAT'S
12 WHAT THIS IS FOR.

13 AND LET ME -- IF YOU GO TO THE NEXT SLIDE -- MAKE ONE
14 THING VERY CLEAR, BECAUSE THIS IS IMPORTANT BECAUSE I THINK
15 COUNSEL FOR APPLE REALLY CONFUSED THIS SEVERAL TIMES DURING HIS
16 CASE, PARTICULARLY DURING THE OPENING STATEMENT.

17 YOU'LL RECALL WHERE THEY SHOWED ONE OF THE PHONES AND
18 SAID, WAIT, SOMEBODY IS TYPING IN AND THERE'S INFORMATION
19 COMING FROM THE INTERNET AND LOCALLY, THE CONTACTS. YOU'LL
20 RECALL THAT VIDEO.

21 WELL, IT'S VERY IMPORTANT WHAT THEY'RE NOT ACCUSING. THIS
22 IS APPLE'S EXPERT, AND I ASKED HIM FLAT OUT, "YOU'RE NOT
23 ACCUSING THE FUNCTIONALITY OF THE GOOGLE SEARCH SERVER; RIGHT?

24 "I THINK THAT'S FAIR."

25 HE AGREES. SO THE GOOGLE SEARCH SERVER, THAT'S NOT

1 APPLE'S INFRINGEMENT CLAIM. THAT DOESN'T HAVE ANYTHING TO DO
2 WITH IT.

3 THAT'S VERY IMPORTANT, BECAUSE WHAT IS IT THAT LOCATES THE
4 INFORMATION ON THE INTERNET? IT SHOULD COME AS NO SURPRISE.
5 IT'S THE GOOGLE SEARCH SERVER.

6 WHAT'S GOOGLE? WHAT HAS GOOGLE BEEN DOING FOR THE LAST --
7 SINCE 1997 WHEN THEY WERE FOUNDED? THAT'S WHAT GOOGLE DOES.

8 BUT THAT'S NOT ACCUSED.

9 SO WHAT IS ACCUSED? LET'S GO TO THE NEXT SLIDE.

10 MR. BRINGERT CAME, THIS IS THE GENTLEMAN FROM GOOGLE WHO
11 WROTE THIS GOOGLE SEARCH APPLICATION, OR HEADED THE TEAM TO
12 WRITE THIS GOOGLE SEARCH APPLICATION, AND HE EXPLAINED -- HE
13 DID THIS DRAWING. WHAT'S ACCUSED IS RIGHT HERE IN THE MIDDLE.
14 WE'VE HIGHLIGHTED IT AS THIS YELLOW BOX. HERE IS THE GOOGLE
15 SEARCH SERVER. REMEMBER, NOT ACCUSED. RIGHT?

16 WHAT DOES THIS YELLOW BOX DO? WELL, IT DOESN'T LOCATE
17 INFORMATION ON THE INTERNET. THAT'S FOR SURE. THAT'S THE
18 GOOGLE SEARCH SERVER THAT DOES THAT.

19 MR. BRINGERT TOLD US WHAT IT DOES. HE SAID THIS BLENDS
20 RESULTS. REMEMBER? BLENDS RESULTS. IN OTHER WORDS, I HAVE
21 SOME RESULTS, SOMEBODY FOUND SOMETHING, SOMEBODY LOCATED
22 SOMETHING FOR ME, AND THIS BLENDS RESULTS.

23 WELL, THAT'S NOT LOCATING. THAT'S NOT WHAT THE CLAIM
24 SAYS. IT SAYS "HEURISTICS TO LOCATE INFORMATION IN A PLURALITY
25 OF LOCATIONS," ONE OF THEM BEING THE INTERNET. RIGHT? IT

1 DOESN'T SAY, OH, TO BLEND INFORMATION TOGETHER THAT SOMEBODY
2 ELSE FOUND FOR ME. THAT'S NOT WHAT THE CLAIM IS, AND YOU CAN'T
3 LET HIM READ THAT LIMITATION OUT OF THE CLAIM.

4 BUT HOW DOES APPLE'S EXPERT ACTUALLY DO THAT? WELL, THIS
5 WAS INTERESTING. THIS WAS SOME QUESTIONING FROM MR. PAK.

6 IF YOU GO BACK AND YOU'RE GOING TO LOOK -- AND I NEED TO
7 EXPLAIN A LITTLE BIT ABOUT THIS. AT THE '959 PATENT, YOU'LL
8 SEE THERE'S SOMETHING DESCRIBED IN THAT '959 PATENT THAT'S
9 CALLED GLOBAL HEURISTICS, OKAY? THAT'S SOMETHING DIFFERENT
10 THAN A PLURALITY OF HEURISTICS THAT'S IN THE CLAIM. THESE
11 GLOBAL HEURISTICS, THEY DO SOME OTHER THINGS, BUT THAT'S NOT
12 PART OF THE CLAIM IN THE PATENT.

13 AND WE SEE HERE FROM APPLE'S EXPERT, HE SAYS EXACTLY THAT.
14 THE GLOBAL HEURISTICS, AS WE'VE DESCRIBED, DO A DIFFERENT THING
15 THAN THE PLURALITY OF HEURISTIC MODULES, RIGHT?

16 AND IF WE LOOK FURTHER HERE, WHAT DID HE SAY? THAT GLOBAL
17 HEURISTICS MAY, AS WE DISCUSSED, FUSE, ORDER, THAT SORT OF
18 THING, THE RESULTS.

19 WELL, WHAT'S FUSE? THAT'S BLEND, RIGHT?

20 SO HE SAID, APPLE'S EXPERT, HE SAID FLAT OUT IN HIS
21 DEPOSITION THAT THIS -- THAT BLENDING THAT THEY ACCUSED ISN'T
22 ONE OF THESE PLURALITY OF HEURISTICS IN THE CLAIM.

23 BUT HE CAME IN HERE TO COURT AND HE TOLD YOU SOMETHING
24 ELSE. RIGHT? HE TOLD YOU SOMETHING ELSE.

25 SO YOU'VE GOT TO CONSIDER THAT WHEN YOU GO BACK THERE.

1 NOW, SO APPLE DOESN'T PRACTICE THIS CLAIM. THE ACCUSED
2 ANDROID PHONES, SAMSUNG PHONES, DON'T PRACTICE THIS CLAIM.

3 BUT WE SHOWED YOU SOMETHING THAT DID, AND THAT'S THE WAIS
4 SYSTEM, SO LET ME JUST REMIND YOU A LITTLE BIT ABOUT THIS WAIS
5 SYSTEM.

6 THIS WAIS SYSTEM WAS THE UNIVERSAL SEARCH SYSTEM THAT WAS
7 DEVELOPED BY A COUPLE GENTLEMEN WHO WE BROUGHT IN TO TESTIFY --
8 I'LL TALK ABOUT THAT IN A MINUTE -- BUT YOU'LL SEE HERE THIS IS
9 THE UNIVERSAL SEARCH BOX. THIS IS A DEMONSTRATION OF WHAT THIS
10 CODE WAS. RIGHT? THIS IS THE UNIVERSAL SEARCH BOX. YOU TYPE
11 IN GEORGE, AND WHAT CAME BACK FROM THE LOCAL MACHINE IS, YOU
12 KNOW, GEORGE ADAMS. HE MIGHT BE A CONTACT THAT YOU HAVE IN
13 YOUR LOCAL MACHINE.

14 AND HERE WHAT CAME BACK IS GEORGE WASHINGTON. OKAY?
15 THOSE WERE PAPERS ABOUT GEORGE WASHINGTON THAT ARE OUT ON THE
16 INTERNET.

17 AND THEN THERE'S A RANKING THAT'S OVER THERE, THAT
18 HEURISTIC RANKING THAT WAS DESCRIBED FOR YOU.

19 SO WHAT DOES APPLE -- FIRST OF ALL, APPLE SAYS THAT WE'RE
20 PLANNING TO SHOW THAT BECAUSE WE BROUGHT TO YOU SOME GENTLEMEN
21 THAT ARE NOT FROM THE UNITED STATES.

22 WELL, BREWSTER KAHLE, RIGHT -- AND LET ME PUT UP SLIDE
23 22 -- HIS NAME IS RIGHT HERE ON THE CODE. THAT'S WHY WE
24 BROUGHT HIM FOR YOU. REMEMBER, THIS WAS OPEN SOURCE CODE,
25 RIGHT? SO HE DEVELOPED THE FIRST VERSION AND HE DESCRIBED FOR

1 YOU WHAT THAT IS.

2 NOW, OTHER PEOPLE BUILT ON THAT. MR. PFEIFER IS THE ONE
3 WHO DID THE VERSION THAT WE TALKED ABOUT. RIGHT? AND HE SAID,
4 YES, THAT DOES SEARCH LOCALLY AND REMOTE AT THE SAME TIME.

5 WE TALKED -- GO FORWARD TO MR. KAHLE. HE SAID IT USES
6 HEURISTICS, RIGHT, TO DO THAT.

7 SO THOSE GENTLEMEN CAME IN AND THEY TESTIFIED TO YOU ABOUT
8 WHAT THEIR PRODUCTS DID.

9 NOW, WHAT'S APPLE'S RESPONSE TO THAT? WELL, APPLE SAYS A
10 FEW THINGS. THEIR FIRST RESPONSE IS, WAIT A MINUTE, YOU CAN'T
11 EVEN CONSIDER THIS AS PRIOR ART BECAUSE IT WASN'T IN THE
12 UNITED STATES. REMEMBER THAT? WE JUST HEARD THAT.

13 WELL, THAT'S NOT RIGHT. THAT'S NOT RIGHT AT ALL. THEY
14 SAID THERE WAS NO EVIDENCE, THAT WE HAD NO EVIDENCE THAT IT WAS
15 INSTALLED HERE IN THE UNITED STATES.

16 IF YOU GO BACK AND YOU LOOK HERE -- THIS IS DX 313, THAT'S
17 AN EXHIBIT YOU HAVE -- THIS WAS AN E-MAIL THAT MR. PFEIFER
18 PRODUCED THAT SHOWS ALL THE INSTALLATIONS IN THE UNITED STATES.
19 I'VE HIGHLIGHTED THAT THERE. YOU GO AHEAD AND GO BACK AND LOOK
20 AT THAT.

21 NOW, WHAT ELSE DID APPLE SAY? WELL, THEIR SECOND THING IS
22 APPLE SAID, WAIT A MINUTE, SOURCE CODE, THAT'S NOT
23 INSTRUCTIONS.

24 SEE, THE CLAIM SAYS CONTAINING PROGRAM INSTRUCTIONS. AND
25 LET ME JUST EXPLAIN THIS TO YOU. IT'S A COMPUTER READABLE

1 MEDIUM, MEANING, YOU KNOW, SOMETHING THE COMPUTER CAN READ,
2 HARD DISK, WHATEVER, RIGHT, THAT CONTAINS THESE PROGRAM
3 INSTRUCTIONS.

4 SO THE PROGRAM INSTRUCTIONS ARE THE SOURCE CODE THAT
5 DR. RINARD TALKED TO YOU ABOUT AND SAID THIS IS THE 1996
6 VERSION, I DIDN'T CHANGE ONE LINE OF CODE. DO YOU REMEMBER
7 THAT?

8 APPLE NEVER CHALLENGED THAT. THEY NEVER SAID, WELL, WAIT
9 A MINUTE, HE CHANGED THIS CODE.

10 BUT APPLE NOW SAYS, THEIR EXPERT SAYS, WELL, WAIT A
11 MINUTE, SOURCE CODE CAN'T BE PROGRAM INSTRUCTIONS.

12 INTERESTING. WHAT THEY'RE SAYING IS, WAIT A MINUTE, IF
13 IT'S INSTRUCTIONS THAT PEOPLE CAN ACTUALLY READ AND GET
14 SOMETHING FROM IT, IT'S NOT PRIOR ART.

15 BUT IF YOU ACTUALLY COMPILE IT, IT IS, EVEN THOUGH PEOPLE
16 CAN'T READ IT.

17 THAT DOESN'T MAKE ANY SENSE.

18 YOU KNOW WHAT ELSE DOESN'T MAKE ANY SENSE? BEFORE THIS
19 CASE, APPLE AGREED -- YOU'RE GOING TO HAVE THIS IN YOUR
20 GLOSSARIES. YOU HAVE A LITTLE GLOSSARY IN YOUR JURY BINDERS
21 ABOUT SOME TERMS THAT MIGHT COME UP IN THE CASE AND WHAT THE
22 PARTIES AGREED TO.

23 WELL, LOOK AT THIS ONE. HERE'S A DEFINITION THAT APPLE
24 AGREED TO. SOURCE CODE, WRITTEN INSTRUCTIONS FOR A COMPUTER.

25 SO I DON'T KNOW WHAT APPLE'S EXPERT IS TALKING ABOUT.

1 RIGHT? APPLE'S ALREADY AGREED THOSE ARE WRITTEN INSTRUCTIONS
2 FOR A COMPUTER.

3 WHAT'S THE THIRD THING THEY SAY? WELL, THE THIRD THING
4 THEY SAY IS, WAIT A MINUTE, ALL OF THE THINGS THAT ARE IN HERE
5 HAVE TO BE LOCATED ON THE LOCAL DEVICE. REMEMBER THEY SAID
6 THAT?

7 AND THEY SAID, WHAT YOU POINT TO, DR. RINARD, IS A
8 HEURISTIC FOR FINDING INFORMATION ON THE INTERNET THAT'S NOT ON
9 THE LOCAL MACHINE.

10 WELL, FIRST OF ALL, THIS IS JUST THE INSTRUCTIONS.
11 REMEMBER, THIS ISN'T A METHOD CLAIM. YOU DON'T ACTUALLY HAVE
12 TO DO ANYTHING. YOU JUST HAVE TO HAVE THE INSTRUCTIONS FOR
13 DOING THAT. RIGHT? THAT'S WHAT'S IMPORTANT.

14 THE SECOND THING IS THERE'S NOTHING IN THIS CLAIM -- THIS
15 IS ANOTHER SITUATION WHERE APPLE'S ADDING THINGS TO THE CLAIM.
16 THERE'S NOTHING IN HERE THAT SAYS, OH, WAIT A MINUTE, I NEED TO
17 HAVE ALL OF THAT INFORMATION ON ONE DEVICE AND, LOOK, ONE OF
18 THE THINGS IS THE INTERNET.

19 SO UNDER APPLE'S LOGIC, THE INTERNET HAS TO BE ON THE
20 LOCAL DEVICE. IT DOESN'T MAKE ANY SENSE.

21 NOW, WHAT'S THE THIRD THING HE SAID? WELL, THE THIRD
22 THING HE SAID IS SAMSUNG'S EXPERT, DR. RINARD ON THIS, DIDN'T
23 IDENTIFY A PLURALITY OF HEURISTICS. "PLURALITY" IS JUST A
24 LAWYER WORD THAT MEANS TWO OR MORE, RIGHT?

25 SO -- BUT HE CAME BACK ON REBUTTAL AND HE POINTED OUT

1 THAT, YES, ABSOLUTELY I DID. THE SOURCE CODE FOR THE THREE
2 HEURISTICS, THE HEURISTIC RELEVANCE RANKING, STEMMING, AND
3 SYNONYMS, HE POINTED THOSE OUT. RIGHT?

4 NOW, REMEMBER, THAT WAS TOWARDS THE END BEFORE WE HAD THE
5 OVERTIME, THE ADDITIONAL DAY OF TESTIMONY, AND APPLE'S COUNSEL
6 NEVER CHALLENGED THAT. THEY STILL HAD -- THEY MADE A BIG DEAL
7 OUT OF, WE HAVE 15 MINUTES LEFT, YOUR HONOR, WE'RE JUST GOING
8 TO GIVE THEM TO THE COURT. THEY NEVER ASKED HIM A SINGLE
9 QUESTION. THEY NEVER CHALLENGED THIS. THEY NEVER SAID, WELL,
10 WAIT A MINUTE, YOU'RE NOT RIGHT.

11 SO YOU'VE GOT TO THINK ABOUT THAT WHEN YOU'RE GOING BACK
12 THERE AND WEIGHING THE EVIDENCE.

13 NOW I WANT TO MOVE TO THE '414 PATENT.

14 THE '414 PATENT -- SOMEBODY IS GOING TO GET THE CLAIM AND
15 PUT IT UP HERE.

16 AGAIN, THE '414 PATENT, THAT'S WHAT APPLE KEEPS CALLING
17 THE BACKGROUND SYNC PATENT.

18 AND I'M GOING TO TALK ABOUT TWO THINGS, AND I'M GOING TO
19 TALK ABOUT THEM IN THE REVERSE ORDER HERE BECAUSE I DO THINK
20 IT'S IMPORTANT.

21 SO THIS WASN'T THE FIRST BACKGROUND SYNCING DEVICE. WE
22 SHOWED YOU THAT. WE SHOWED YOU THE WINDOWS MOBILE M.E.,
23 REMEMBER THAT, THAT MICROSOFT HAD DONE BEFORE.

24 SO THIS ISN'T JUST ABOUT BACKGROUND SYNCING. IT'S ABOUT A
25 VERY SPECIFIC ARCHITECTURE, AS YOU HEARD DURING THIS CASE, FOR

1 BACKGROUND SYNCING, AND WHEN I WALK THROUGH WHAT APPLE SAYS TO
2 TRY TO GET AROUND THE PRIOR ART, YOU'RE GOING TO SEE HOW VERY
3 SPECIFIC IT IS, AND THAT SPECIFIC ARCHITECTURE IS SOMETHING
4 THAT SAMSUNG DOES NOT USE.

5 SO LET'S GO FIRST TO WHAT APPLE TOLD YOU IN OPENING
6 STATEMENT ABOUT WHAT THIS INVENTION IS. THEY SAID, IT ALLOWS
7 THE PHONE TO DO IT AT THE SAME TIME, MEANING SYNCING, SO THAT
8 THE USER IS NEVER DISRUPTED AND NEVER UNDERSTANDS ACTUALLY THAT
9 THE SYNCING IS HAPPENING IN THE BACKGROUND.

10 WELL, WHAT WERE THEY IMPLYING TO YOU? THEY WERE IMPLYING
11 TO YOU THAT WITHOUT THIS PATENT, THIS INVENTION, THIS IS
12 BACKGROUND SYNCING.

13 IT'S THE SAME THING WHEN THEY SHOWED YOU MR. LOCKHEIMER'S
14 TESTIMONY. YOU RECALL THAT TESTIMONY? THEY SAID, OH, LOOK, HE
15 SAID IT WAS IMPORTANT.

16 WELL, BACKGROUND SYNCING MAY BE. BUT NOBODY EVER SAID,
17 AND APPLE DIDN'T TELL YOU, OURS IS A REALLY SPECIFIC WAY OF
18 DOING IT. RIGHT?

19 MR. LOCKHEIMER TALKED -- WHEN HE WAS TALKING ABOUT THAT,
20 HE SAID, YEAH, THIS IS -- YOU KNOW, I WORKED AT THIS COMPANY,
21 GOOD, BACK IN THE 2000S AND IT WAS AN E-MAIL COMPANY AND THAT
22 WAS IMPORTANT TO US, THOSE KINDS OF THINGS.

23 SO DON'T BE DISTRACTED, LADIES AND GENTLEMEN. THIS CLAIM
24 IS VERY SPECIFIC.

25 AND LET'S WALK THROUGH THAT. SO WHAT DID APPLE'S EXPERT

1 SAY WHEN I ASKED HIM THESE QUESTIONS? DID IT COVER ALL WAYS OF
2 DOING BACKGROUND SYNCING? HE VERY QUICKLY SAID, NO, NO, NO,
3 THIS IS A PARTICULAR WAY. RIGHT?

4 AND THEN SHORTLY THEREAFTER, HE TOLD US WHAT IT WAS.
5 YOU'VE GOT TO HAVE THREE. REMEMBER THAT? WE TALKED ABOUT THAT
6 A FEW TIMES.

7 WITH CLAIM 25, THE WAY THIS IS, AND ALL THE PARTIES AGREE,
8 YOU'VE GOT -- ONE OF MY FINGERS HAS BEEN BROKEN A FEW TIMES,
9 WHEN I HOLD IT UP, IT DOESN'T WORK VERY WELL, SORRY -- I'LL USE
10 THIS HAND -- YOU HAVE GOT TO HAVE THREE OF THESE
11 SYNCHRONIZATION SOFTWARE COMPONENTS, RIGHT, NOT TWO. AND EACH
12 OF THOSE THREE HAS TO BE FOR A DIFFERENT CLASS OF DATA. THE
13 EXAMPLES WE'VE BEEN USING WERE E-MAIL, CONTACTS, CALENDAR.
14 RIGHT? IT'S JUST A DIFFERENT DATABASE IS WHAT WE'RE REALLY
15 TALKING ABOUT WHEN WE SAY A CLASS.

16 SO WE KNOW THAT THAT'S VERY PARTICULAR.

17 WE DON'T DO IT.

18 BUT WINDOWS MOBILE M.E. DOES, AND LET ME SHOW YOU THAT
19 VIDEO THAT WE PLAYED JUST TO REMIND YOU OF WHAT'S GOING ON, AND
20 I'M GOING TO TALK ABOUT THIS, WHAT'S GOING ON.

21 (A VIDEOTAPE WAS PLAYED IN OPEN COURT OFF THE RECORD.)

22 MR. NELSON: WE'VE GOT TWO DEVICES HERE THAT ARE
23 TALKING TO EACH OTHER, AND HERE SOMEBODY IS MAKING A CONTACT,
24 PUTTING IN -- AKIN ANDERSON I THINK IS WHAT IT'S GOING TO TURN
25 OUT TO BE. YOU SEE HE'S WORKING ON THAT, TYPES IN A PHONE

1 NUMBER, AND SAYS OKAY.

2 SO HE SENT THAT, RIGHT? BASICALLY, YOU KNOW, OKAY, I WANT
3 TO SYNC.

4 AND NOW OVER HERE WHAT'S GOING ON ON THIS OTHER DEVICE,
5 HE'S GOING THROUGH THE INTERFACE, GOING THROUGH HIS CONTACTS
6 AND SAYING, WELL, YEAH, LOOK, I'M LOOKING AT THIS, I'M LOOKING
7 AT THAT.

8 AND WE SEE UP HERE THAT LITTLE TOWER STARTS BECOMING
9 ACTIVE, SO THAT MEANS IT'S SYNCING, AND THERE YOU GO,
10 AKIN ANDERSON.

11 SO THE WINDOWS M.E., WE KNOW IT CAN DO EXACTLY WHAT APPLE
12 SHOWED YOU WITH THE ACCUSED DEVICES IN THEIR OPENING STATEMENT.

13 SO THIS RIGHT HERE, AS WE WALKED THROUGH, IT HAS THE
14 ARCHITECTURE, THIS VERY SPECIFIC ARCHITECTURE OF CLAIM 20.

15 SO WHAT DOES APPLE SAY IN RESPONSE? AND THIS IS
16 IMPORTANT. IN FACT, IN THIS DOCUMENT YOU WANT TO LOOK AT --
17 IT'S DX 317 WHEN YOU GO BACK THERE -- THIS DESCRIBES THE
18 WINDOWS MOBILE M.E. ARCHITECTURE, AND YOU SEE THESE THREE BOXES
19 UP THERE, E-MAIL, CONTACTS, AND CALENDAR. THAT WAS DR. CHASE,
20 YOU RECALL HE CAME AND TESTIFIED. THIS IS WHAT HE SAID WERE
21 THE PROVIDERS THAT CORRESPONDED TO THE THREE SYNCHRONIZATION
22 SOFTWARE COMPONENTS.

23 WELL, WHAT DID APPLE'S EXPERT SAY? HE ACTUALLY SAID IN
24 EACH ONE OF THOSE ARE, INDEED, THE SYNCHRONIZATION, SOFTWARE
25 SYNCHRONIZATION COMPONENTS AND THEY ARE, INDEED, CONFIGURED TO

1 SYNCHRONIZE THOSE PARTICULAR DATA CLASSES.

2 SO HE AGREES, WINDOWS MOBILE M.E., IT HAS THAT SPECIFIC
3 ARCHITECTURE. THERE'S NO DISPUTE THERE.

4 BUT WHAT DOES HE SAY? WELL, I'VE LOOKED AT THE SOURCE
5 CODE.

6 AND, IN FACT, DR. CHASE EVEN TESTIFIED IN HIS TESTIMONY
7 THAT NONE OF THOSE PROVIDE A THREAD.

8 SO WE HEARD SOMETHING WE NEVER HEARD IN THE INFRINGEMENT
9 CASE, WELL, WAIT A MINUTE, THOSE DON'T PROVIDE A THREAD.

10 SO NOW THAT BECOMES THE ONLY DISTINCTION HE'S MAKING FOR
11 THIS PRIOR ART REFERENCE, IT DOESN'T PROVIDE A THREAD. AND HE
12 SAID, WELL, DR. CHASE AGREED.

13 INTERESTING, BECAUSE I LISTENED TO DR. CHASE AND I DIDN'T
14 HEAR THAT.

15 SO WHAT DID DR. CHASE ACTUALLY SAY? HE'S TALKING ABOUT
16 THESE PROVIDERS, THEY'RE ILLUSTRATED THERE, AND THESE
17 SYNCHRONIZATION SOFTWARE COMPONENTS, AND THEY PROVIDE THE
18 SYNCHRONIZATION SOFTWARE PROCESSING THREADS I SPOKE ABOUT.

19 I DON'T KNOW WHAT HE'S TALKING ABOUT. WHAT IS APPLE'S
20 EXPERT TALKING ABOUT? HE TRIED TO TELL YOU THAT DR. CHASE
21 AGREED AND SAID, OH, THESE DON'T PROVIDE A THREAD.

22 BUT YOU CAN SEE THE TESTIMONY RIGHT HERE. HE EXPLICITLY
23 SAID THEY DO PROVIDE A THREAD.

24 NOW --

25 THE COURT: I'M SORRY TO INTERRUPT YOU, BUT IT'S

1 12:02. CAN WE GO AHEAD AND TAKE OUR LUNCH BREAK?

2 MR. NELSON: YES, YOUR HONOR.

3 THE COURT: OKAY. THANK YOU. WHY DON'T WE COME BACK
4 AT -- WE HAVE A LOT OF PEOPLE TODAY, SO IT MAY GET CONGESTED.
5 WHY DON'T WE COME BACK AT 1:10? OKAY?

6 PLEASE DON'T RESEARCH OR DISCUSS THE CASE. WE'LL SEE YOU
7 BACK AT 1:10. THANK YOU.

8 (JURY OUT AT 12:03 P.M.)

9 THE COURT: OKAY. THE JURORS HAVE LEFT THE
10 COURTROOM. WHY DON'T I JUST GIVE YOU YOUR TIME TOTALS?

11 APPLE AS USED 1 HOUR AND 31 MINUTES, SO YOU HAVE 29
12 MINUTES LEFT.

13 SAMSUNG HAS USED 1 HOUR AND 7 MINUTES, SO YOU HAVE 53
14 MINUTES LEFT.

15 ALL RIGHT. THANK YOU. LET'S TAKE OUR LUNCH BREAK.

16 MR. NELSON: THANK YOU, YOUR HONOR.

17 (LUNCH RECESS WAS TAKEN FROM 12:03 P.M. TO 1:07 P.M.)
18
19
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25

AFTERNOON SESSION

(JURY OUT AT 1:09 P.M.)

THE COURT: HAVE THE PARTIES STIPULATED TO THE
EXHIBITS?

MS. MAROULIS: YES, YOUR HONOR.

MS. KREVANS: YES, YOUR HONOR.

THE COURT: OKAY. THANK YOU.

(JURY IN AT 1:09 P.M.)

THE COURT: OKAY. WELCOME BACK. PLEASE TAKE A SEAT.
ALL RIGHT. ARE YOU READY, MR. NELSON?

MR. NELSON: I AM, YOUR HONOR.

THE COURT: ALL RIGHT. TIME IS 1:09. PLEASE GO
AHEAD.

MR. NELSON: GREAT, THANK YOU.

OKAY. SO LET'S PICK UP RIGHT WHERE WE LEFT OFF. WE WERE
TALKING ABOUT THE ONLY DISTINCTION THAT APPLE RAISED WITH THE
WINDOWS M.E. PRIOR ART, AND THAT WAS THIS IDEA OF PROVIDING A
THREAD. WE LOOKED AT THE TESTIMONY, BUT LET'S SEE IF WE CAN
FIGURE OUT WHAT APPLE'S EXPERT WAS TALKING ABOUT.

NOW, IF WE GO TO THE NEXT SLIDE, I THINK WE HAVE A LITTLE
BIT OF INSIGHT HERE. WHAT APPLE'S EXPERT HAS DONE IS TO CHANGE
THE DEFINITION OF WHAT IT MEANS TO PROVIDE A THREAD, AND HE DID
IT IN A WAY THAT WAS INCONSISTENT WITH WHAT HE SAID AT HIS
DEPOSITION. THAT'S THE ONLY WAY THAT HE RAISES THIS
DISTINCTION.

1 MR. PAK ASKED HIM A QUESTION, "ARE YOU SAYING THAT
2 PROVIDING A THREAD IS THE SAME THING WAS CREATING A THREAD,
3 SIR? YES OR NO?"

4 "YES, SIR, I'VE SAID THAT, AND I'LL SAY IT AGAIN."

5 BUT THEN WE SHOWED HIM HIS DEPOSITION TESTIMONY, AND YOU
6 SEE HERE -- I'LL PICK UP TOWARDS THE BOTTOM -- THAT "YOU SAY
7 THAT THE WORD 'PROVIDING' IN CLAIM 11 REQUIRES CREATING A
8 THREAD; IS THAT FAIR?"

9 "ANSWER: I SAY IT REQUIRES PROVIDING THE THREAD, WHICH IS
10 THE PLAIN LANGUAGE INTERPRETATION. I'M NOT QUITE SURE WHAT YOU
11 MEAN BY 'CREATE.' I MEAN, TECHNICALLY THERE IS NO CREATE."

12 SO WHEN WE GET TO TRIAL, THE ONLY DISTINCTION THAT HE
13 RAISES -- HE FIRST TELLS YOU THAT DR. CHASE DIDN'T SAY IT, AND
14 WE JUST SAW THAT HE DID, AND THE NEXT THING HE SAID IS HE
15 PROVIDES A DEFINITION OF WHAT IT MEANS TO PROVIDE A THREAD
16 THAT'S DIRECTLY CONTRADICTORY TO WHAT HE SAID AT HIS
17 DEPOSITION, AND THAT'S THE ONLY DISTINCTION THAT APPLE RAISED
18 AT THIS TRIAL WITH RESPECT TO THAT WINDOWS MOBILE M.E. PRIOR
19 ART.

20 SO LET ME TALK ABOUT WHY THIS PATENT IS NOT INFRINGED, BUT
21 I FIRST WANT TO ADDRESS SOMETHING THAT APPLE'S COUNSEL
22 ADDRESSED IN OPENING JUST TO CLEAR -- EXCUSE ME -- IN CLOSING,
23 WE'RE AT THE END NOW, BECAUSE HE LEFT SOMETHING OUT HERE.

24 YOU RECALL THAT HE SHOWED YOU THIS AND SAID, LOOK, IT TOOK
25 TWO YEARS FOR GOOGLE TO DEVELOP THIS BACKGROUND SYNCING.

1 WELL, WHAT WAS GOING ON BETWEEN THIS -- REMEMBER, THIS,
2 YOU HEARD TESTIMONY ABOUT THIS, THIS 2008 ANDROID 1.0 RELEASE,
3 THAT'S A FULL RELEASE. THAT WAS ON A PHONE, EVERYTHING
4 WORKING.

5 SO FROM 2006 TO 2008, THEY WEREN'T JUST WORKING ON
6 BACKGROUND SYNCING. RIGHT? THEY WERE WORKING ON DEVELOPING
7 THE ENTIRE OPERATING SYSTEM, THE PLATFORM, THE FRAMEWORK, ALL
8 THE THINGS YOU HEARD ABOUT THAT ARE GOING ON IN THERE.

9 THE OTHER THING THAT WAS LEFT OFF WAS HERE'S WHERE THE
10 '414 PATENT COMES IN, 2010. SO THIS IS WAY AFTER THE FACT.

11 NOW, LET'S TALK ABOUT THIS NON-INFRINGEMENT. SO YOU'LL
12 RECALL THAT -- IF WE GO TO THE NEXT SLIDE, MR. KOTARSKI --
13 YOU'LL RECALL THIS IS -- THESE ARE THE SYNC ADAPTERS THAT WE'RE
14 ACCUSED OF, AND WHAT'S GOING ON HERE IS THEY'RE TRYING TO DO A
15 LITTLE MISDIRECTION.

16 BECAUSE THEY'RE CALLED SYNC ADAPTERS, THEY SAY, OH, OKAY,
17 SYNC ADAPTERS, THEREFORE, THEY MUST DO THE SYNCHRONIZATION.
18 BECAUSE, REMEMBER, THAT'S WHAT THE CLAIM REQUIRES. RIGHT?
19 SYNCHRONIZATION SOFTWARE COMPONENT IS CONFIGURED TO SYNCHRONIZE
20 STRUCTURED DATA. RIGHT?

21 WELL, AS WE SHOWED YOU FOR FOUR OF THESE, AND FOR ALL OF
22 THEM IN THE MAIL DATA CLASS, THERE ARE NO SUCH THINGS. RIGHT?
23 THAT'S NOT WHAT THEY DO.

24 AND WE BROUGHT YOU MR. WESTBROOK. HE'S THE GENTLEMAN THAT
25 HEADED UP THE GROUP THAT ACTUALLY DID THIS WORK. RIGHT? AND

1 HE MADE THIS DRAWING AND HE SHOWED YOU, AND IT'S THIS LITTLE
2 YELLOW BOX AGAIN THAT THEY'RE ACCUSING. WE HIGHLIGHTED IT.
3 THAT'S THE SYNC ADAPTER.

4 BUT LOOK WHAT IT'S NOT CONNECTED TO. IT'S NOT CONNECTED
5 TO THE DATABASE AND IT'S NOT CONNECTED TO THE GMAIL SERVER. IT
6 DOESN'T SYNCHRONIZE ANYTHING. IT CAN'T. IT DOESN'T HAVE
7 ACCESS TO THOSE THINGS.

8 AND MR. WESTBROOK EXPLAINED TO YOU WHY THAT WAS. RIGHT?
9 WE USED A DIFFERENT ARCHITECTURE BECAUSE WE WANTED TO DO IT
10 FASTER. WE WANTED THE APPLICATION TO BE FASTER.

11 SO IT WASN'T JUST THAT IT WASN'T THERE. IT WAS THAT THERE
12 WAS A SPECIFIC TECHNICAL REASON FOR IT.

13 AND WITH RESPECT TO THOSE EXCHANGE SYNC ADAPTERS, HE SAID
14 THE SAME THING. NO, IT'S NOT THAT. WE WANT TO PUSH E-MAIL.
15 WE WANT TO BE FASTER. WE USE THE EXCHANGE SERVICE.

16 WE DON'T USE THESE EXCHANGE SYNC ADAPTERS IN ORDER TO DO
17 THE SYNCHRONIZATION OF THE STRUCTURED DATA, WHICH IS WHAT THE
18 CLAIM REQUIRES.

19 SO WHAT DOES APPLE'S EXPERT SAY IN RESPONSE? WELL, YOU'LL
20 RECALL THIS. WHAT HE SAYS IS, "WELL, I THINK THERE WAS SOME
21 DISCUSSION ABOUT THAT. I WANT TO BE CLEAR, IT'S MY POSITION
22 THAT I'VE IDENTIFIED SYNCHRONIZATION COMPONENTS THAT CAUSE THE
23 SYNCHRONIZATION TO OCCUR, ABSOLUTELY."

24 REMEMBER THAT? HE SAID THAT CAUSE THE SYNCHRONIZATION TO
25 OCCUR.

1 WELL, YOU'LL SEE BOTH PLACES, WHICH IS CONFIGURED TO
2 SYNCHRONIZE HERE IN CLAIM 11, WHEREIN THE SYNCHRONIZATION
3 SOFTWARE COMPONENT IS CONFIGURED TO SYNCHRONIZE, RIGHT, IS
4 CONFIGURED TO SYNCHRONIZE. IT DOESN'T SAY "CAUSE."

5 IF MY SON CAME TO ME AND SAID, I SAID, SON, DID YOU DO
6 YOUR HOMEWORK, AND HE SAID, WELL, DAD, I CAUSED IT TO BE DONE,
7 THAT ANSWER WOULD SOUND STRANGE TO ME, AND IT SHOULD SOUND
8 STRANGE TO YOU HERE BECAUSE THAT'S NOT WHAT THIS CLAIM
9 REQUIRED.

10 SO HOW DO WE KNOW THAT'S NOT WHAT IT REQUIRED? AND YOU'LL
11 HAVE THIS. THIS IS JX 8 THAT WE PUT INTO EVIDENCE. THIS IS
12 FROM THE FILE WRAPPER AT PAGE 751.

13 YOU'LL SEE THAT AT ONE TIME, APPLE DID HAVE A CLAIM THAT
14 SAID "CONFIGURED TO CAUSE RETRIEVAL AND STORAGE OF THE
15 STRUCTURED DATA," RETRIEVAL AND STORAGE, SYNCHRONIZING. RIGHT?
16 THAT'S WHAT YOU'RE DOING. IT SAID THAT.

17 BUT THERE WAS PRIOR ART OUT THERE. THEY COULDN'T HAVE
18 THAT CLAIM.

19 AND SO THEY TOOK IT OUT, AND NOW IT SAYS "CONFIGURED TO
20 SYNCHRONIZE."

21 SO IN ORDER TO TRY TO GET AROUND THE PRIOR ART IN THE
22 PATENT OFFICE, THEY TOLD THE PATENT OFFICE, NOT CAUSING.
23 RIGHT? THIS IS A DIRECT RELATIONSHIP. TAKE IT OUT. THAT'S
24 THE BARGAIN THEY STRUCK WITH THE PATENT OFFICE.

25 NOW THEY'RE COMING IN HERE AND THEY WANT TO SAY SAMSUNG'S

1 PHONES, ANDROID CODE INFRINGES. RIGHT? THEY WANT TO SAY THAT.

2 WHAT DO THEY DO? THEY TAKE IT -- THEY PUT IT BACK IN.

3 THEY CHANGED THE BARGAIN, RIGHT, BECAUSE THEY CAN'T GET

4 INFRINGEMENT WITHOUT REWRITING THE CLAIM.

5 BUT YOU CAN'T LET THEM DO IT. YOU CAN'T LET THEM DO IT
6 BECAUSE THAT'S NOT WHAT THE PROCESS IS. THEY STRUCK THIS DEAL.
7 NOW THEY'VE GOT TO STICK WITH IT.

8 SO NOW LET ME TURN TO THE '172 PATENT. NOW, IN THE '172
9 PATENT, THIS IS THE ONE THAT THE COURT ALREADY FOUND INFRINGES.
10 YOU DON'T HAVE TO DEAL WITH THAT.

11 ONE THING THAT MIGHT NOT BE CLEAR FROM THIS WITH THE '172
12 PATENT IS FOR THE PHONES THAT ARE IN THIS CASE THAT HAVE BEEN
13 RELEASED SINCE SAMSUNG GOT NOTICE OF THAT PATENT -- THE NOTICE
14 WAS THE LAWSUIT, THAT'S FEBRUARY 8TH, 2012 -- THEY'RE NOT
15 ACCUSING THEM. NOBODY SAYS -- APPLE DOESN'T SAY THAT THOSE
16 PHONES HAVE THE INFRINGING KEYBOARDS OR THE TABLET.

17 SO I JUST WANT TO MAKE THAT POINT CLEAR BECAUSE IT MAY NOT
18 HAVE BEEN CLEAR TO YOU WHEN WE WENT THROUGH THE CASE.

19 BUT LET ME TELL YOU WHY THAT CLAIM IS INVALID, AND LET ME
20 SHOW YOU HERE. I WANT TO SHOW YOU THE ROBINSON PRIOR ART.

21 YOU'LL RECALL DR. WIGDOR, SAMSUNG'S EXPERT, CAME IN AND
22 WALKED THROUGH THIS ROBINSON REFERENCE AND TOOK YOU THROUGH
23 STEP BY STEP WITH RESPECT TO THE CLAIMS.

24 AND THE ONLY THING THAT WAS MISSING WAS THE IDEA, IF YOU
25 LOOK BEHIND FROM THIS FIGURE, WAS THAT WHEN YOU'RE TYPING, YOU

1 PUT THE WORDS IN AT THE CURSOR. RIGHT? YOU PUT WHAT YOU'RE
2 TYPING IN AT THE CURSOR.

3 AND SO THAT WOULD BE THIS FIRST AREA, THE TOUCHSCREEN
4 DISPLAY THAT, THAT DISPLAYS A CURRENT CHARACTER STRING BEING
5 INPUT BY THE USER. OKAY? HE EXPLAINED THAT.

6 NOW -- BUT THAT WAS IT. THAT WAS THE ONLY THING.

7 AND IF WE LOOK TO 96A, HE BROUGHT THE XRGOMICS PATENT UP,
8 RIGHT, AND SHOWED YOU, HERE'S A MOBILE DEVICE, HERE'S A MOBILE
9 DEVICE AND THIS IS ONE WHERE, AS IS COMMONLY KNOWN, YOU HAVE
10 THE CHARACTERS BEING INPUT.

11 SO WHAT'S APPLE'S RESPONSE TO THAT? IT'S TWO-FOLD.

12 WELL, THE FIRST THING IS, WELL, THE PATENT OFFICE ALREADY
13 LOOKED AT THIS.

14 WELL, THEY DIDN'T LOOK AT THIS COMBINATION. ALL THEY
15 TALKED ABOUT IS ROBINSON. THERE'S NO EVIDENCE THAT THE PATENT
16 OFFICE LOOKED AT THIS COMBINATION OR THAT ANYBODY TOLD THEM,
17 HEY, YOU CAN COMBINE THESE THINGS TOGETHER.

18 WHAT'S THE OTHER THING THEY SAY? WELL, WAIT A MINUTE,
19 NOBODY WOULD BECAUSE XRGOMICS IS A WORD SUGGESTION PATENT, NOT
20 A WORD CORRECTION PATENT. THAT'S WHAT THEY SAID.

21 WHERE DOES IT SAY THAT? IT DOESN'T SAY IT IN THE CLAIM.
22 THAT'S JUST SOMETHING THAT APPLE'S ADDED. WELL, THIS IS, YOU
23 KNOW, WORD CORRECTION. THIS IS MISSPELLING. IT DOESN'T SAY
24 THAT.

25 AND YOU'LL SEE, IN THOSE JURY INSTRUCTIONS, COMBINING

1 THINGS, IF THEY'RE IN THE SAME FIELD, RIGHT, IF THEY'RE
2 RELATED, THEN THOSE ARE KINDS OF THINGS THAT CAN BE COMBINED.
3 SO YOU'VE GOT TO CONSIDER THAT WHEN YOU GO BACK THERE.

4 AND THERE'S ANOTHER THING THAT'S IMPORTANT HERE. APPLE
5 KEEPS SAYING DEFER TO THE PATENT OFFICE, DEFER TO THEM. AND
6 I'VE ALREADY TALKED ABOUT THAT. THAT'S NOT YOUR ROLE HERE.

7 BUT I'M GOING TO ILLUSTRATE HERE WHY IT'S REALLY
8 IMPORTANT, BECAUSE YOU'LL RECALL WHEN APPLE'S EXPERT WENT
9 THROUGH, RIGHT, HE UNDERLINED A WHOLE BUNCH OF THINGS. EVERY
10 TIME THE FIRST AREA WORD APPEARED, HE UNDERLINED IT. RIGHT?
11 DO YOU REMEMBER THAT?

12 BUT EACH TIME, I WAS VERY CAREFUL -- AND APPLE'S COUNSEL
13 ACTUALLY SAID THE SAME THING IN CLOSING -- THE REASON WHY HE
14 WAS UNDERLINING IT IS HE SAID, WELL, BECAUSE THE CHARACTERS
15 DON'T APPEAR IN THE FIRST AREA, THIS NEXT THING WON'T HAPPEN.

16 IT'S JUST CONFIRMING THAT THE ONLY THING MISSING IS THE
17 FACT THAT THE FIRST CHARACTERS.

18 SO APPLE -- THEY'RE LOOKING TO MAKE A LOT OF MONEY ON THIS
19 PATENT. THEY'RE SAYING BECAUSE, WAIT A MINUTE, ROBINSON HAS
20 EVERYTHING ELSE, BUT WE DON'T PUT THE WORDS IN IT IN ROBINSON,
21 YOU KNOW, WHAT YOU'RE TYPING AT THE CURSOR, THAT SHOULD BE FOR
22 A PATENT. THEY NEVER BROUGHT THE INVENTORS TO YOU AND SAID WHY
23 IS THAT SO DIFFICULT? RIGHT?

24 AND IT IS PARTICULARLY IMPORTANT HERE BECAUSE REMEMBER AT
25 THE PATENT OFFICE, IT WAS JUST APPLE. THEY COULD COME IN AND

1 TELL THEM THE SAME THING, WELL, WAIT A MINUTE, THIS IS MISSING
2 AND THIS IS MISSING AND THIS IS MISSING, ALL BECAUSE THERE'S NO
3 CHARACTERS BEING TYPED AT THE FIRST AREA. THERE WASN'T
4 ANYBODY, LIKE US, TO RESPOND. RIGHT?

5 SO THAT'S VERY IMPORTANT THAT YOU CONSIDER THAT AND GO
6 BACK.

7 NOW I WANT TO MOVE TO THE LAST PATENT. THIS IS THE '721
8 PATENT, SLIDE TO UNLOCK.

9 SO HERE -- FIRST I WANT TO SHOW YOU THE GALAXY NEXUS, AND
10 WE TALKED ABOUT THIS AND WHY THAT GALAXY NEXUS DOESN'T INFRINGE
11 THIS CLAIM. THE WORDS OF THE CLAIM BECOME VERY IMPORTANT HERE.

12 SO YOU'LL SEE HERE THAT YOU HAVE TO MAKE CONTACT WITH AN
13 UNLOCK IMAGE, AND THEN YOU -- TO CONTINUOUSLY MOVE THE UNLOCK
14 IMAGE ON THE TOUCH SENSITIVE DISPLAY. IN OTHER WORDS, THAT
15 SAME WHEN YOU TOUCH, YOU MOVE IT.

16 BUT IF WE PLAY THE VIDEO OF THE GALAXY NEXUS, YOU'LL
17 RECALL THIS, THAT DOESN'T HAPPEN. RIGHT?

18 (A VIDEOTAPE WAS PLAYED IN OPEN COURT OFF THE RECORD.)

19 MR. NELSON: YOU'LL SEE, THIS IS WHAT APPLE IS
20 CALLING THE UNLOCK IMAGE.

21 BUT WHEN THE GENTLEMAN TOUCHES IT, IT DISAPPEARS. IT GOES
22 AWAY.

23 AND APPLE'S RESPONSE TO THAT IS, WELL, I HAVE SOMETHING IN
24 THE SPECIFICATION OF THE PATENT WHERE IT SAYS SOMETHING ON THE
25 UNLOCK IMAGE CAN APPEAR AND DISAPPEAR.

1 WELL, TWO THINGS WITH THAT. ONE, AS WE WENT THROUGH, IT
2 DOESN'T SAY THE UNLOCK IMAGE CAN DISAPPEAR IN THE
3 SPECIFICATION. IT'S SOMETHING ON IT.

4 AND THE OTHER THING IS WHAT'S IMPORTANT IS THE CLAIM. THE
5 CLAIM DOESN'T -- YOU DON'T COMPARE IT TO THE SPECIFICATION.
6 YOU COMPARE IT TO THE CLAIM, AND THE CLAIM SAYS THAT YOU NEED
7 TO CONTINUOUSLY MOVE THAT UNLOCK IMAGE.

8 SO IT DOESN'T INFRINGE FOR THAT REASON.

9 NOW LET ME TALK ABOUT INVALIDITY WITH RESPECT TO THIS
10 PATENT. I'M GOING TO FINISH UP HERE.

11 SO HERE WAS THE ONLY INVENTOR THAT WAS BROUGHT TO YOU, THE
12 ONLY INVENTOR THAT APPLE HAD, AND THAT WAS MR. CHRISTIE.

13 WELL, HE GAVE SOME INTERESTING TESTIMONY HERE. HE SAID
14 WHY IT WAS THAT THEY DEVELOPED THEIR UNLOCK SCREEN, "WE WANTED
15 IT TO BE SOMETHING THAT WOULD BE REALLY UNLIKELY TO HAPPEN
16 ACCIDENTALLY." THAT'S WHAT HE SAID. RIGHT? OKAY.

17 WELL, WE SHOWED YOU THE NEONODE PRIOR ART, THIS IS THE
18 PHONE, AND IT IS -- THE REASON FOR THE UNLOCKING, IT SAYS RIGHT
19 THERE IN THE REFERENCE -- AND YOU'LL HAVE THIS DX 342 THAT YOU
20 CAN LOOK AT BACK IN THE JURY ROOM -- IT SAYS TO MAKE SURE NO
21 UNINTENTIONAL CALLS ARE MADE, IN OTHER WORDS, EXACTLY THE SAME
22 REASON.

23 AND FURTHER, WHAT DOES IT SAY IN HERE? WHAT HAPPENS WITH
24 IT? YOU PRESS THE POWER BUTTON, JUST LIKE YOU WOULD ON ANY OF
25 THESE PHONES IN ORDER TO GET THE SCREEN TO COME ON, AND THEN

1 THE TEXT "RIGHT SWEEP TO UNLOCK" APPEARS ON THE SCREEN. SWEEP
2 RIGHT. THAT'S WHAT THEY SAY.

3 THAT'S WHAT THIS IS. SO THE ONLY THING THAT WOULD BE
4 MISSING FROM THIS WOULD BE AN UNLOCK IMAGE. THAT'S ALL.

5 WELL, WE SHOWED YOU PRIOR ART THAT HAS THAT UNLOCK IMAGE.
6 SPECIFICALLY, THE SLIDERS -- IF WE GO TO THE NEXT SLIDE -- THIS
7 IS FROM THE PLAISANT VIDEO THAT WE SHOWED YOU. RIGHT? THERE'S
8 SLIDERS IN THE PRIOR ART.

9 AND NOW LET'S GO TO THE THING THAT APPLE SHOWED YOU -- AND
10 THIS IS GOING TO ILLUSTRATE TO YOU WHY IT'S VERY IMPORTANT FOR
11 YOU TO BE A CHECK ON THIS AND NOT SIMPLY DEFER TO THE PATENT
12 OFFICE -- APPLE SHOWED YOU, DURING THEIR EXPERT'S TESTIMONY,
13 THIS FIRST PART FROM THE PLAISANT PAPER WHERE IT SAYS, OH, WE
14 WANT TOGGLES, THOSE ARE PREFERRED OVER SLIDES. SO HE SAYS THAT
15 TEACHES AWAY FROM USING SLIDERS. YOU'LL RECALL THAT TESTIMONY.

16 BUT RIGHT BELOW, WHAT THEY DIDN'T SHOW YOU, WHAT DOES IT
17 SAY? "EVEN IF SLIDERS WERE NOT PREFERRED, THE FACT THAT USERS
18 USED THEM CORRECTLY IS ENCOURAGING SINCE MANY OTHER CONTROLS
19 CAN BE DESIGNED USING A SLIDING MOTION. ANOTHER ADVANTAGE OF
20 THE SLIDING MOTION IS THAT IT IS LESS LIKELY TO BE DONE
21 INADVERTENTLY."

22 IN OTHER WORDS, EXACTLY THE SAME REASON FOR USING SLIDERS
23 THAT MR. CHRISTIE TESTIFIED TO OF WHY THEY CAME UP WITH THEIR
24 UNLOCK.

25 NOW, THE PATENT OFFICE DIDN'T, THEY DIDN'T -- NOBODY

1 POINTED THIS OUT TO THEM.

2 WE KNOW WHAT APPLE POINTED OUT TO YOU WHEN THEY CAME. SO
3 TO THE EXTENT THAT THERE WAS A DISCUSSION WITH THE PATENT
4 OFFICE, WE CAN ONLY ASSUME THEY POINTED THEM TO THE SAME THING.

5 THAT'S VERY MISLEADING AND THAT'S WHY IT'S IMPORTANT FOR
6 YOU TO BE A CHECK, BECAUSE WE'RE HERE TO RESPOND. WE'RE HERE
7 TO BRING OUT THE INFORMATION ON THE OTHER SIDE OF THE STORY.

8 SO WITH THAT, I REALLY APPRECIATE YOUR ATTENTION. I KNOW
9 IT'S -- IT'S BEEN, YOU KNOW, A LONG, LONG CASE.

10 BUT THINK ABOUT IT WHEN YOU GO BACK IN THERE. YOUR JOB IS
11 TO WEIGH THE EVIDENCE, RIGHT, TO WEIGH THE EVIDENCE YOU'VE
12 HEARD.

13 AND I'VE GIVEN YOU A ROADMAP FROM MY SIDE OF THE CASE.
14 AND THINK ABOUT WHO WE BROUGHT. WE BROUGHT THE PEOPLE THAT
15 ACTUALLY WROTE THE SOFTWARE, THE GOOGLE ENGINEERS, MS. KIM.
16 THEY CAME IN. WE SHOWED THAT.

17 WE BROUGHT IN THE PRIOR ARTISTS, TO THE EXTENT THAT WE
18 WERE RELYING ON PRIOR ART, WHO WROTE THAT SOFTWARE.

19 WHAT DID APPLE DO IN RESPONSE? APPLE BROUGHT IN ONE
20 INVENTOR. THE OTHER 13, YOU DIDN'T HEAR THEM. THEY WEREN'T
21 HERE.

22 WHAT ELSE DID THEY DO? THEY BROUGHT IN EXPERTS. THAT'S
23 BASICALLY THEIR CASE. YOU DON'T HEAR FROM THE PEOPLE WHO DO
24 IT, WHO DEVELOPED IT. THEY BROUGHT IN EXPERTS, AND AS WE SAW
25 WALKING THROUGH HERE, THEY BROUGHT IN EXPERTS WHO CONTRADICTED

1 THEMSELVES, AND THAT'S SOMETHING FOR YOU TO JUDGE WHEN YOU GO
2 BACK THERE IN THE JURY ROOM.

3 AND WITH THAT, I APPRECIATE YOUR ATTENTION AND I'M GOING
4 TO TURN IT OVER TO MY COLLEAGUE, MR. JOHNSON, WHO'S GOING TO
5 TALK TO YOU ABOUT THE SAMSUNG CASE, SAMSUNG PATENTS.

6 THANK YOU VERY MUCH.

7 **(MR. JOHNSON GAVE HIS CLOSING ARGUMENT ON BEHALF OF THE**
8 **DEFENDANTS.)**

9 MR. JOHNSON: GOOD AFTERNOON, LADIES AND GENTLEMEN.

10 LET'S SWITCH GEARS. I'M HERE TO TALK ABOUT THE TWO
11 SAMSUNG PATENTS, THE '239 PATENT AND THE '449 PATENT.

12 NOW, THE AFFIRMATIVE CASE, SAMSUNG'S AFFIRMATIVE CASE WENT
13 BY AND HAPPENED VERY QUICKLY. WE DIDN'T HAVE MUCH TIME,
14 ESPECIALLY WHEN YOU'RE DEFENDING AGAINST APPLE'S GROSSLY
15 INFLATED DAMAGES CLAIM ON THE APPLE PATENTS.

16 BUT THE QUICK PACE OF THE AFFIRMATIVE CASE SHOULDN'T
17 DETRACT FROM THE IMPORTANCE OF SAMSUNG'S PATENTS, AND I'LL
18 ADDRESS THE EVIDENCE SHORTLY, BUT LET ME SLOW DOWN HERE BECAUSE
19 I WANT YOU TO REMEMBER THE CASE FOR WHAT APPLE DID NOT DO.

20 APPLE DID NOT CHALLENGE THE VALIDITY OF THE SAMSUNG
21 PATENTS. APPLE DID NOT CHALLENGE THE MOUNTAIN OF EVIDENCE AND
22 THE APPLE SOURCE CODE THAT WE SHOWED YOU THAT SHOWS THAT APPLE
23 INFRINGEMENTS THESE TWO PATENTS.

24 AND APPLE DID NOT CHALLENGE THE DAMAGES CALCULATIONS ON
25 THE SAMSUNG PATENTS AT ALL. THEY DID NOT CHALLENGE -- THEY

1 DIDN'T BRING A SINGLE WITNESS OR HAVE ANY TESTIMONY TO
2 CHALLENGE THE TESTIMONY OF DR. KEARL AND DR. RAO ON DAMAGES.

3 NOW, DR. KEARL CALCULATED DAMAGES TO BE ABOUT \$6 MILLION
4 ON THE '239 PATENT AND ABOUT \$158,000 FOR THE '449 PATENT.

5 NOBODY CAME TO SAY THESE DAMAGES NUMBERS WERE WRONG, AND
6 NOBODY CAME TO SAY DR. RAO'S STRAIGHTFORWARD SURVEY WAS FLAWED.

7 APPLE NEVER CALLED DR. VELLTURO, THEIR EXPERT, AND NOBODY
8 ELSE CAME TO TESTIFY ON DAMAGES.

9 SO YOU WILL HEAR, LIKELY WHEN APPLE'S COUNSEL STANDS UP TO
10 DO HIS PART OF THE CLOSING, THAT THEY DON'T INFRINGE EITHER ONE
11 OF THESE PATENTS AND THAT THE TECHNOLOGY IS OLD AND NOT USED.

12 BUT EVEN AS THEIR EXPERT ADMITTED AND AS INSTRUCTION
13 NUMBER 18 SAYS IN THE JURY INSTRUCTIONS, YOU ARE TO COMPARE THE
14 ASSERTED CLAIMS TO THE ACCUSED PRODUCTS. YOU DON'T COMPARE THE
15 1993 FIRSTLOOK PRODUCT, THE OLD PRODUCT BROCHURES AND THE PRICE
16 QUOTATIONS TO THE ACCUSED PRODUCTS. YOU COMPARE THE CLAIMS TO
17 THE ACCUSED PRODUCTS.

18 AND IF WE LOOK AT THE '239 PATENT, CLAIM 15, THIS PATENT
19 WAS AHEAD OF ITS TIME. AND THE CLAIM IS SHORT AND
20 STRAIGHTFORWARD. IT TALKS ABOUT CAPTURING AND COMPRESSING
21 VIDEO AND THEN TRANSMITTING THAT VIDEO OVER A CELLULAR NETWORK.

22 WE BROUGHT YOU MICHAEL FREEMAN FROM TULSA, OKLAHOMA, WHO
23 WAS THE LEAD INVENTOR ON THE PATENT, AND HE CAME AND TOLD YOU
24 ABOUT THE VIDEO TRANSMISSION TECHNOLOGY THAT HE INVENTED WITH
25 HIS FAMILY, AND IT WAS VERY SUCCESSFUL AND IT WAS USED BY THE

1 MILITARY, IT WAS USED BY TELEVISION STATIONS AROUND THE
2 COUNTRY, AND IT WAS USED IN THE OKLAHOMA CITY BOMBINGS TO
3 STREAM VIDEO TO RESCUERS. HE TOLD YOU HOW THIS TECHNOLOGY WAS
4 SUCCESSFUL AND HOW IT WON TWO EMMY AWARDS.

5 AND THEN WE BROUGHT YOU DR. DAN SCHONFELD, A PROFESSOR
6 FROM THE UNIVERSITY OF ILLINOIS AT CHICAGO, A PROFESSOR OF
7 ELECTRICAL ENGINEERING AND COMPUTER ENGINEERING.

8 AND HE EXPLAINED HOW THE FACETIME OVER CELLULAR FEATURE
9 AND THE ABILITY TO TRANSMIT VIDEOS BY E-MAIL AND TEXT MESSAGES
10 ALL INFRINGE CLAIM 15, AND HE WALKED THROUGH A LOT OF DETAIL,
11 THROUGH DOCUMENTS THAT WERE CONFIDENTIAL APPLE DOCUMENTS,
12 CONFIDENTIAL APPLE SOURCE CODE, AND OTHER THIRD PARTY
13 DOCUMENTS.

14 NOW, THE CLAIMS REQUIRE -- CLAIM 15 REQUIRES A VIDEO
15 CAPTURE MODULE.

16 APPLE SAYS THEY DON'T CAPTURE VIDEO. WELL, WE KNOW WHEN
17 YOU USE AN IPHONE, YOU CAN RECORD AND CAPTURE VIDEO AND IT
18 STORES IT.

19 DR. SCHONFELD SHOWED YOU -- AND THIS IS ONLY FOR THE JURY
20 AT THIS POINT -- HE SHOWED YOU THE APPLE SOURCE CODE THAT SAYS
21 APPLE CAPTURES VIDEO. THESE ARE SEGMENTS FROM JX 52A, WHICH
22 YOU'LL HAVE IN THE JURY ROOM, AND THESE ARE FUNCTIONS THAT ARE
23 APPLE'S FUNCTIONS THAT ALL DESCRIBE THE FACT THAT THE IPHONES
24 CAPTURE VIDEO.

25 AND YOU'LL RECALL WHEN I CROSS-EXAMINED APPLE'S EXPERT ON

1 THE STAND AND I ASKED HIM, DID YOU LOOK AT SOURCE CODE AND RELY
2 UPON IT AS PART OF YOUR DIRECT TESTIMONY, HE HAD TO ADMIT THAT
3 HE DID NOT. HE DID NOT RELY UPON SOURCE CODE IN HIS DIRECT
4 TESTIMONY.

5 SO DR. SCHONFELD, SAMSUNG'S EXPERT, ALSO SHOWED YOU THE
6 SOURCE CODE FOR THE NEXT PART OF THE LIMITATION THAT TALKS
7 ABOUT MEANS FOR TRANSMISSION.

8 AND HE WALKED THROUGH HOW THE SOURCE CODE -- AND AGAIN
9 CONFIDENTIAL DOCUMENTS, PLAINTIFF'S EXHIBIT 255 -- ALSO
10 ESTABLISHED THAT THIS PART OF THE LIMITATION IS MET.

11 SO APPLE'S EXPERT WAS IN A BOX. WHAT DID THEY DO?
12 APPLE'S EXPERT CAME AND TRIED TO ARGUE THAT APPLE DOESN'T
13 INITIALIZE A PORT AS PART OF THIS MEANS FOR TRANSMISSION.

14 WELL, YOU WILL HAVE DX 351 IN THE JURY ROOM, AND I
15 ENCOURAGE YOU TO LOOK AT PAGE 1818. AND ON THAT PAGE, YOU WILL
16 SEE APPLE REFERS TO THE FACT THAT IT HAS THREE PORTS.

17 AND HE ALSO SHOWED YOU THE PARTS OF THE SOURCE CODE THAT
18 ALSO ESTABLISH IT HAS PORTS.

19 SO THEN APPLE'S EXPERT WENT SO FAR AS TO SAY, WELL,
20 FACETIME DOESN'T TRANSMIT VIDEO.

21 WELL, WE KNOW FROM COMMON SENSE THAT FACETIME, THE WHOLE
22 PURPOSE BEHIND FACETIME IS TO TRANSMIT VIDEO AND TO HAVE A
23 VIDEO CONVERSATION, AND THAT'S EXACTLY WHAT DR. SCHONFELD
24 EXPLAINED AS HE WALKED THROUGH THE VIDEO THAT SHOWED YOU HOW
25 FACETIME WORKS.

1 AND, IN FACT, ULTIMATELY WHEN I CROSS-EXAMINED DR. STORER
2 AGAIN AND I POINTED OUT TO HIM THAT HE HAD PROVIDED A REPORT
3 EARLIER IN THE CASE AND THAT IN HIS REPORT, IT REFERRED TO THE
4 FACT THAT, QUOTE, "THE FACETIME APPLICATION PREPARES TO
5 TRANSMIT VIDEO," HE HAD NO CHOICE BUT TO AGREE WITH ME.

6 AND THAT STATEMENT THAT HE GAVE IN HIS EXPERT REPORT IN
7 THIS CASE DIRECTLY CONTRADICTS HIS TESTIMONY IN THIS COURT
8 WHERE HE SAID THAT FACETIME DOESN'T TRANSMIT VIDEO. OF COURSE
9 IT TRANSMITS VIDEO.

10 SO APPLE TOLD YOU DURING THEIR OPENING STATEMENT THAT
11 SAMSUNG SELLS TO APPLE SOME COMPONENTS THAT IT NOW ACCUSES OF
12 INFRINGEMENT. WELL, THIS IS MISLEADING AND WRONG.

13 FIRST, THE FACT THAT APPLE BUYS SOME COMPONENTS FROM
14 SAMSUNG IS NOT A DEFENSE TO INFRINGEMENT. APPLE KNOWS IT'S NOT
15 A DEFENSE. THEY DON'T ALLEGE IT'S A DEFENSE.

16 AND YOU WON'T FIND A JURY INSTRUCTION IN THE JURY
17 INSTRUCTIONS THAT SAYS IT'S A DEFENSE, BECAUSE IT ISN'T A
18 DEFENSE.

19 AS DR. SCHONFELD WENT ON AND EXPLAINED, APPLE ACTUALLY
20 DESIGNS AND IMPLEMENTS THE A6 PROCESSOR, WE SAW THAT PROCESSOR
21 THAT HAD THE APPLE LOGO ON IT, AND WE ALSO SAW -- IF WE PUT UP
22 DX 466, AND AGAIN YOU'LL HAVE THIS IN THE JURY ROOM -- APPLE
23 ITSELF REFERS TO THE FACT THAT IT DESIGNS ITS OWN A6 PROCESSOR
24 CHIP.

25 IN ADDITION, APPLE WRITES ITS SOURCE CODE, AND THE SOURCE

1 CODE IS CONFIDENTIAL -- THEY WON'T LET US SHOW IT TO ANYBODY
2 ELSE EXCEPT YOU AND THE COURT AT THIS POINT -- AND THEY COMBINE
3 THE ACCUSED COMPONENTS AND THE SOURCE CODE IN AN INFRINGING
4 WAY, AND IT'S THIS COMBINATION OF COMPONENTS WITH THE SOURCE
5 CODE THAT INFRINGES THE CLAIMS.

6 LET'S TURN TO THE '449 PATENT, THE PHOTO AND VIDEO ALBUM
7 ORGANIZATION PATENT.

8 SO CLAIM 27 STARTS WITH A DIGITAL CAMERA. SAMSUNG BROUGHT
9 YOU MR. PARULSKI TO TESTIFY. HE WAS THE DIGITAL CAMERA EXPERT
10 THAT WORKED AT KODAK FOR 32 YEARS. HE WAS A DIGITAL CAMERA
11 ARCHITECT. HE DEVELOPED THE WORLD'S FIRST COLOR DIGITAL
12 CAMERA. HE HAS 200, MORE THAN 200 DIGITAL CAMERA PATENTS AND
13 MORE THAN 60 DIGITAL CAMERA PUBLICATIONS.

14 APPLE BROUGHT YOU DR. STORER AGAIN, THE SAME EXPERT THAT
15 THEY USED ON THE VIDEO TRANSMISSION PATENT, DIFFERENT
16 TECHNOLOGY, AND DR. STORER ADMITTED ON CROSS-EXAMINATION THAT
17 HE DOESN'T HAVE EXPERIENCE DESIGNING DIGITAL CAMERAS.

18 THE ONLY REAL DIGITAL CAMERA EXPERT THAT YOU HEARD IN THIS
19 CASE WAS SAMSUNG'S MR. PARULSKI.

20 AND MR. PARULSKI WALKED THROUGH, AGAIN, THE EVIDENCE,
21 APPLE INTERNAL DOCUMENTS THAT CONFIRMED EACH PART OF THE CLAIM
22 IS IN THE ACCUSED PRODUCTS. YOU'LL HAVE PLAINTIFF'S EXHIBIT
23 255 AND 351 TO LOOK AT IN THE JURY ROOM, AND HE WALKED THROUGH
24 EACH LIMITATION THAT WE SEE HERE, AND ALSO ON THE NEXT SLIDE,
25 PLEASE, KEN.

1 AND HE SHOWED YOU THAT THIS PATENT IS ALL ABOUT SEARCHING
2 FOR PHOTOGRAPHS AND VIDEOS, AND HE SHOWED YOU THAT WHEN YOU
3 HAVE A PHONE, THE APPLE CAMERA ROLL, AND YOU LOOK AT THE CAMERA
4 ROLL, YOU CAN SEARCH THROUGH A LIST OF PHOTOGRAPHS TO FIND THE
5 PHOTO OR THE VIDEO THAT YOU'RE LOOKING FOR.

6 AND HE THEN EXPLAINED HOW THE SOURCE CODE IN THE APPLE
7 CONFIDENTIAL DOCUMENTS CONFIRM HIS UNDERSTANDING, AND HE WALKED
8 THROUGH A LOT OF LIMITATIONS AND FOUND THAT EACH OF THEM WERE
9 PRESENT IN THE IPHONE AND THE IPOD.

10 NOW, LET'S TALK A LITTLE BIT ABOUT DAMAGES.

11 AGAIN, IN THIS CASE WHERE THE PARTIES DISAGREED ON ALMOST
12 EVERYTHING, APPLE DIDN'T BRING A SINGLE WITNESS TO CHALLENGE
13 SAMSUNG'S DAMAGES CASE. YOU HEARD FROM DR. KEARL, A PROFESSOR
14 OF ECONOMICS WHO HAS WRITTEN BOOKS, TEXTBOOKS ON ECONOMICS,
15 HE'S CALCULATED PATENT DAMAGES IN A LOT OF CASES, AND HE EVEN
16 WAS RETAINED BY THE COURT TO SERVE AS A NEUTRAL EXPERT FOR THE
17 COURT IN ANOTHER CASE.

18 AND YOU HEARD FROM DR. RAO, A SURVEY EXPERT WHO HAS
19 EXTENSIVE EXPERIENCE DESIGNING AND CONDUCTING SURVEYS.

20 NOW, DR. KEARL DID A SIMPLE, STRAIGHTFORWARD ANALYSIS, AND
21 HE USED THE STRAIGHTFORWARD SURVEY THAT DR. RAO HAD DONE TO
22 MEASURE THE RELATIVE VALUE OF THE PATENTED FEATURES IN THE '239
23 AND THE '449 PATENT, AND HE USED REAL WORLD EVIDENCE.

24 HE USED A REAL WORLD PRICE OF \$.99 FOR FACETIME, WHICH IS
25 THE PRICE THAT APPLE USERS PAID TO DOWNLOAD THE FACETIME APP

1 ONTO ITS DESKTOP.

2 AND THAT'S WHAT ECONOMISTS DO, THEY USE REAL WORLD
3 EVIDENCE AND REAL WORLD MARKET PRICES. THAT'S EXACTLY WHAT
4 DR. KEARL DID HERE.

5 AND FOR THE '239 PATENT, HE CALCULATED THAT THE DAMAGES
6 ARE A LITTLE OVER 6 MILLION FOR ALL THREE OF THE IMPORTANT
7 FEATURES OF FACETIME, BEING ABLE TO SEND E-MAIL, AN E-MAIL WITH
8 A VIDEO OR BEING ABLE TO TEXT MESSAGE A VIDEO.

9 AND HIS DAMAGES CALCULATIONS ON BOTH PATENTS CAN BE FOUND
10 IN DEFENDANT'S EXHIBIT 391A, AND YOU'LL HAVE THAT IN THE JURY
11 ROOM ALSO TO REFER TO. THAT EXHIBIT IS IN EVIDENCE.

12 NOW, AGAIN, YOU DIDN'T HEAR FROM DR. VELLTURO OR ANYBODY
13 ELSE THAT DR. KEARL'S NUMBERS WERE WRONG. NOT A SINGLE WITNESS
14 CHALLENGED HIS CALCULATIONS OR HIS METHODOLOGY, AND NOT A
15 SINGLE WITNESS CHALLENGED DR. RAO'S SURVEY, EITHER.

16 NOW, FOR THE '449 PATENT, THE NUMBER IS CONSIDERABLY
17 LOWER. IT'S \$158,000, AND DR. KEARL TESTIFIED THAT'S BECAUSE
18 OF TWO REASONS. THE FIRST IS THE VIDEO ALBUM PATENT IS NOT AS
19 VALUABLE AS THE FACETIME AND E-MAILING VIDEOS FEATURE THAT'S
20 COVERED BY THE '239.

21 AND SECOND, FOR THE '449 PATENT, THERE'S A NON-INFRINGEMENT
22 ALTERNATIVE, A WAY TO DESIGN AROUND THE PATENT, AND IF A PATENT
23 IS EASY TO DESIGN AROUND, IT LOWERS THE VALUE OF THE PATENT.
24 THAT MAKES SENSE.

25 SO DR. KEARL USED REAL WORLD EVIDENCE, AND HE ALSO USED

1 THE FACT THAT -- REMEMBER, THE INVENTOR CAME AND TESTIFIED THAT
2 HE HAD SEVERAL PATENT TECHNOLOGY COMPANIES THAT WERE INTERESTED
3 IN BUYING HIS VIDEO TRANSMISSION PATENT. SAMSUNG PAID
4 \$2.3 MILLION FOR TWO PATENTS, AND HE USED THAT AS A CHECK, AS A
5 REALITY CHECK TO CHECK HIS NUMBER AND HIS METHODOLOGY.

6 AND HE ALSO USED THE FACT THAT HITACHI AND SAMSUNG HAD
7 ENTERED INTO AN AGREEMENT WHERE SAMSUNG PURCHASED THE '449
8 PATENT AS PART OF A BUNDLE OF PATENT RIGHTS. THEY PURCHASED
9 ABOUT 106 PATENTS AND PATENT APPLICATIONS FOR \$35 MILLION, AND
10 HE USED THAT AS ANOTHER REALITY CHECK.

11 I'LL EXPECT THAT APPLE'S COUNSEL, IN CLOSING, WILL SAY --
12 TRY AND MAKE AN ISSUE OUT OF THE FACT THAT SAMSUNG PURCHASED
13 BOTH OF THESE PATENTS. THERE'S NOTHING WRONG WITH PURCHASING
14 PATENTS. COMPANIES BUY AND SELL PATENTS ALL THE TIME.

15 AND YOU WON'T HEAR APPLE SAY THAT PURCHASING A PATENT IS A
16 DEFENSE TO INFRINGEMENT. IT ISN'T.

17 AND THE SAME IS TRUE WITH THE '239 PATENT BEING EXPIRED.
18 THE FACT THAT IT'S NOW EXPIRED DOESN'T RELIEVE APPLE OF THE
19 FACT THAT IT'S STILL LIABLE FOR INFRINGEMENT WHILE THAT PATENT
20 WAS ACTIVE.

21 SO WITH THAT, I GO BACK TO THE FACT THAT THE REAL WORLD
22 PURCHASE PRICES THAT DR. KEARL RELIES ON SERVE AS A REALITY
23 CHECK, AND THEY CONFIRM WHAT YOUR COMMON SENSE ALREADY TELLS
24 YOU, THE \$6 MILLION NUMBER FOR THE '239 PATENT AND THE \$158,000
25 NUMBER FOR THE '449 PATENT MAKES SENSE. THEY'RE REAL WORLD

1 NUMBERS THAT APPLE DOES NOT DISPUTE.

2 THANK YOU.

3 I'LL TURN IT OVER TO MR. QUINN.

4 MR. QUINN: THANK YOU.

5 LADIES AND GENTLEMEN, I HAVE VERY LITTLE TIME TO TALK
6 ABOUT DAMAGES, SO I'M GOING TO HAVE TO RELY ON YOU FOLKS TO
7 REMEMBER A LOT OF THE DETAILS BECAUSE THIS IS GOING TO BE
8 PAINFULLY QUICK. I APOLOGIZE FOR THAT.

9 BUT I WILL BE TALKING ABOUT APPLE'S DAMAGES CLAIM, AND NOT
10 BECAUSE -- JUST TO BE CLEAR, I THINK IT IS CLEAR, WE DON'T
11 THINK WE OWE APPLE A NICKEL. BUT WE'RE REQUIRED TO ADDRESS ALL
12 THE ISSUES, INCLUDING DAMAGES, AND IN THIS CASE IN PARTICULAR,
13 I THINK IT'S KIND OF REVEALING TO LOOK AT APPLE'S DAMAGES CASE
14 FOR THE LIGHT IT SHEDS ON ALL OF ITS CASE AND THE CREDIBILITY
15 OF ITS CASE.

16 YOU'LL RECALL THERE ARE THREE BUCKETS OF DAMAGES THAT THEY
17 SEEK, THE DIMINISHED DEMAND LOST PROFITS, THE OFF THE MARKET
18 LOST PROFITS, AND THEN THE REASONABLE ROYALTY.

19 I'M GOING TO DISCUSS THOSE IN ORDER, AND I'M GOING TO
20 BEGIN WITH THE DIMINISHED DEMAND LOST PROFITS.

21 YOU'LL RECALL THESE ARE -- THE THEORY OF THIS IS THAT IF
22 WE DIDN'T HAVE THESE FIVE FEATURES IN OUR PHONES, WE WOULD SELL
23 FEWER PHONES AND APPLE WOULD CAPTURE A NUMBER OF THOSE PHONES
24 EQUAL TO ITS MARKET SHARE. THAT'S THE THEORY, ABOUT 40
25 PERCENT.

1 AND LADIES AND GENTLEMEN, THAT IS ALL HAUSER. THAT IS
2 HAUSER. THAT IS -- HE'S CENTRAL TO THAT THEORY. THEY DON'T
3 RELY ON HIM JUST TO SAY, AS MR. MCELHINNY SUGGESTED, THAT THIS
4 SHOWS, THIS SURVEY SHOWS THERE IS DEMAND FOR THESE FEATURES.

5 THE ONLY QUANTITATIVE BASIS THAT DR. VELLTURO HAD FOR HIS
6 DIMINISHED DEMAND NUMBERS WAS HAUSER. THAT'S ALL HE'S GOT.

7 HE'S ALSO THE BASIS FOR THE WILLINGNESS TO PAY AND THE,
8 YOU KNOW, WILLINGNESS TO BUY NUMBERS AND REASONABLE ROYALTY,
9 AND I'LL GET TO THAT, THAT'S ALSO BASED ON HAUSER.

10 BUT IF VELLTURO DOESN'T HAVE HAUSER, HE DOESN'T HAVE ANY
11 BASIS FOR THESE DIMINISHED DEMAND NUMBERS, SO IT'S IMPORTANT TO
12 BEGIN WITH HIM.

13 AND I JUST WANT TO SAY AT THE BEGINNING, WE DON'T HATE
14 PROFESSOR HAUSER. WE DON'T HATE HIM.

15 HIS SURVEY, THOUGH, WAS USELESS TO ACCOMPLISH THE PURPOSE
16 THAT HE OFFERED IT FOR. IT HAS A NUMBER OF FLAWS. I ONLY HAVE
17 TIME TO DISCUSS A FEW.

18 IN THAT SURVEY, HE PRETENDS LIKE HE'S MEASURING THE
19 DIFFERENCE BETWEEN THE PATENT AND THE ALTERNATIVE, AND YOU SAW
20 THAT. YOU SAW HOW HE OVERSTATES THE BREADTH OF THE PATENT AND
21 UNDERSTATES WHAT THE ALTERNATIVES ARE.

22 AND REMEMBER, THOSE DESCRIPTIONS IN THE SURVEY CAME FROM
23 THE LAWYERS.

24 IF WE CAN LOOK AT SLIDE 45, I SHOWED YOU THIS IN THE
25 OPENING STATEMENT. AUTOMATIC WORD CORRECTION, THIS IS THE ONLY

1 WAY YOU CAN GET AUTOMATIC WORD CORRECTION. IF YOU DON'T HAVE
2 OUR FEATURE, YOU KNOW, YOU'VE GOT TO GO DOWN TO THE SECOND AREA
3 AND SELECT A DIFFERENT SPELLING OR A DIFFERENT WORD.

4 YOU KNOW THAT'S SIMPLY NOT TRUE.

5 SLIDE 47. THE DART PHONE, WE'VE HAD IT SINCE JUNE 15TH,
6 2011. FROM, YOU KNOW, WELL BEFORE THEIR PATENT ISSUED. WE HAD
7 THAT. THAT WAS AUTOMATIC WORD CORRECTION. I SHOWED IT TO YOU
8 IN OPENING STATEMENT.

9 THAT WAS NEVER DISPUTED.

10 WHAT IS APPLE'S RESPONSE TO THAT? SLIDE 48. THEY SAY,
11 WELL, THEY FOUND THIS DOCUMENT WHERE SOME UNNAMED PERSON SAYS
12 SOMEONE ELSE SAID THE DART KEYBOARD WAS, QUOTE-UNQUOTE, A
13 SOMEWHAT JARRING EXPERIENCE, SO SOMEHOW THAT'S NOT A SUITABLE
14 ALTERNATIVE.

15 TAKE A LOOK AT THE DATE OF THAT DOCUMENT. IT'S PX 168,
16 SLIDE 49. THAT'S DATED APRIL 2012. THAT IS TWO MONTHS BEFORE
17 THE S III PHONE LAUNCHES, OUR ALL TIME BEST SELLER.

18 NOTWITHSTANDING THAT DOCUMENT, WE LAUNCHED THAT PHONE WITH
19 THE DART KEYBOARD, AUTOMATIC WORD CORRECTION, AND WE SOLD
20 3 MILLION PHONES WITH THAT KEYBOARD WITH NO COMPLAINTS. NOBODY
21 BROUGHT IN ANY EVIDENCE THAT THERE WERE ANY COMPLAINTS.

22 IT WAS REPLACED WITH ANOTHER NON-INFRINGEMENT KEYBOARD A FEW
23 MONTHS LATER, BUT THE POINT IS THIS WAS A CONTRIVED -- THIS WAS
24 A -- THIS SURVEY IS JUST AN EFFORT TO MISLEAD YOU.

25 SYNCING, IF WE LOOK AT SLIDE 44, YOU SAW WHAT PEOPLE WERE

1 TOLD. IF YOU DON'T HAVE THIS FEATURE, YOU HAVE TO WAIT. YOU
2 HAVE TO WAIT.

3 NO -- NO INFORMATION HERE ABOUT THIS IS THREE COMPONENT
4 BACKGROUND SYNCING, THIS IS OUR PARTICULAR PATENT. NO. THEY
5 JUST SAY, IF YOU DON'T HAVE THIS, YOU'RE GOING TO HAVE TO WAIT
6 AND THE WAIT MAY BE LONG OR SHORT.

7 YOU KNOW, APPLE DOESN'T OWN EVERYTHING. APPLE DOESN'T OWN
8 ALL WAYS OF SYNCING IN BACKGROUND. THEY'VE GOT THIS CLAIM FOR
9 THREE COMPONENT SYNCING. THEY DON'T OWN ALL WAYS OF SYNCING.

10 THIS WAS NOT A DESCRIPTION OF THE WORLD AS IT REALLY IS TO
11 SAY, YOU KNOW, IF YOU DON'T DO WHAT WE DO, WHICH THEY DON'T
12 EVEN DESCRIBE, YOU KNOW, YOU'RE GOING TO HAVE TO WAIT.

13 WE SHOWED YOU OTHER, THE WINDOWS MOBILE, MR. NELSON SHOWED
14 YOU SLIDE 43, IT WAS ALREADY OUT THERE.

15 SO, YOU KNOW, THE DESCRIPTIONS WERE FLAWED.

16 SECOND, THE DESIGN OF THE SURVEY MADE IT ABSOLUTELY
17 WORTHLESS FOR WHAT APPLE TRIED TO DO. YOU KNOW, YOU CAN'T --
18 CONJOINT SURVEYS HAVE THEIR USES. YOU HEARD THAT. IF YOU
19 WANTED TO COMPARE CUP HOLDERS AND SEE WHAT CUP HOLDERS PEOPLE
20 PREFER, OR SMALL FEATURES COMPARING THEM AGAINST EACH OTHER,
21 CONJOINT SURVEYS ARE FINE.

22 BUT YOU CAN'T ASK PEOPLE ABOUT CUP HOLDERS AND MAKE
23 CONCLUSIONS ABOUT WHAT AUTOMOBILES THEY WOULD BUY OR WHAT
24 SHIFTS IN MARKET SHARE WOULD BE.

25 DR. HAUSER'S SURVEY IS LIKE SAYING, TELL ME WHAT CUP

1 HOLDER YOU LIKE, WHAT GLOVE BOX LATCH YOU PREFER, WHICH AIR
2 CONDITIONING KNOBS YOU PREFER, TELL ME WHETHER YOU WANT TWO
3 DOORS OR FOUR DOORS, AND TELL ME THE COLOR OF THE CAR YOU WANT
4 AND I WILL TELL YOU WHAT CAR YOU'LL BUY. THAT'S REALLY WHAT IT
5 COMES DOWN TO.

6 YOU CAN'T DO THAT. FOR COMPLEX PRODUCTS, YOU HAVE TO
7 INCLUDE THE MAJOR FEATURES.

8 AND THIS MAY HAVE GONE PAST A LOT OF US BECAUSE IT
9 HAPPENED SO FAST. ON THE STAND, DR. HAUSER ACTUALLY AGREED
10 WITH THIS. SLIDE 42. HE WAS ASKED THE QUESTION, "YOU DO AGREE
11 THAT FOR THE PURPOSE OF ESTIMATING DEMAND FOR A PATENTED
12 FEATURE, MAJOR PRODUCT FEATURES MUST BE INCLUDED?

13 "ANSWER: YES."

14 BUT THAT'S EXACTLY WHAT HE DIDN'T DO. HE LEFT OUT THE
15 MAJOR FEATURES, THE TRUE DRIVERS, BRAND, BATTERY LIFE, LG --
16 YOU KNOW, 4G LTE. IT'S NOT A PROPER USE OF A SURVEY.

17 INSTEAD -- AND THEN THE OTHER THING HE, YOU KNOW, HE
18 EDUCATED PEOPLE. INSTEAD OF FINDING OUT, YOU KNOW, ASKING
19 THESE SAMSUNG PHONE OWNERS, WHY DID YOU BUY YOUR PHONES AND
20 FINDING OUT WHAT THEY KNEW ABOUT THESE FEATURES, DO YOU KNOW
21 YOU'VE GOT THIS THREE COMPONENT BACKGROUND SYNC OR NOT, DO YOU
22 KNOW YOU HAVE THIS PHONETOP SEARCH WITH TWO HEURISTICS, INSTEAD
23 HE EDUCATED THEM, MADE THEM WATCH 18 VIDEOS BEFORE THEY TAKE
24 THE SURVEY.

25 THAT CREATES WHAT DR. ERDEM SAYS ARE DEMAND ARTIFACTS. IT

1 ARTIFICIALLY INFLATES THE VALUE OF THE FEATURES. YOU'RE NOT
 2 GOING TO GET ANY USEFUL INFORMATION THAT WAY.

3 AND HOW DOES HE KNOW? YOU KNOW, THE WHOLE POINT OF THIS
 4 IS IT HAS NO INTEGRITY. IT HAS NO RELIABILITY IF PEOPLE DON'T
 5 UNDERSTAND IT.

6 WELL, DR. HAUSER SAID, I CHECKED WHETHER THEY UNDERSTOOD
 7 IT. I ASKED THEM, DID YOU UNDERSTAND? YES. END OF IT.

8 HE WAS ASKED -- MR. PRICE ASKED HIM ON THE STAND, DIDN'T
 9 YOU ASK THEM WHAT YOU UNDERSTOOD? HE SAYS, DON'T YOU DO THAT
 10 IN YOUR CLASSES AT SCHOOL?

11 HE SAID, NO, I'M A SOCRATIC TEACHER. I DON'T GIVE TESTS
 12 LIKE THAT TO ASK WHAT PEOPLE ACTUALLY LEARN.

13 DOES THIS MAKE ANY SENSE TO YOU FOLKS? WE'RE RELYING ON
 14 YOU TO COME TO THIS COURTROOM AS JURORS AND USE YOUR COMMON
 15 SENSE, AND IT WAS CLEAR THAT THESE PEOPLE DID NOT UNDERSTAND
 16 THESE QUESTIONS.

17 DR. REIBSTEIN, YOU'LL RECALL, DID AN EXACT PRE-TEST USING
 18 THE EXACT SAME WORDS THAT DR. HAUSER USED. SLIDE 50. HE FOUND
 19 OVERWHELMING CONFUSION, THE YESES UP THERE ARE, YEAH, IT TURNED
 20 OUT PEOPLE WERE CONFUSED.

21 SLIDE 51, 25 OUT OF 26 DIDN'T UNDERSTAND QUICK LINKS.

22 22 OUT OF 26 DIDN'T UNDERSTAND BACKGROUND SYNCING.

23 18 OUT OF 26 WERE CONFUSED ABOUT AUTOMATIC WORD
 24 CORRECTION.

25 REMEMBER THE VIDEOS. UNIVERSAL SEARCH MEANT YOU COULD

1 HAVE WI-FI WHEREVER YOU WERE. YOU WOULD ALWAYS BE CONNECTED.

2 TO SYNC, YOU HAVE TO HOOK UP. WHAT IT MEANT IS, YOU KNOW,
3 IF YOU DIDN'T HAVE THEIR BACKGROUND SYNCING, YOU WOULD HAVE TO
4 HOOK UP, USE A USB CABLE TO HOOK UP TO YOUR COMPUTER.

5 YOU KNOW, IF YOU DON'T HAVE THEIR ANALYZER SERVER, YOU
6 HAVE TO WRITE DOWN AND MEMORIZE PHONE NUMBERS AND ADDRESSES.

7 YOU DON'T HAVE TO TAKE DR. REIBSTEIN'S WORD FOR IT.
8 PLEASE LOOK AT DEFENSE EXHIBIT 454A. THERE YOU'LL HAVE THE
9 TRANSCRIPTS OF ALL THOSE INTERVIEWS AND YOU CAN DECIDE FOR
10 YOURSELVES. DID THESE PEOPLE HAVE THE FOGGIEST IDEA OF WHAT
11 THEY WERE BEING ASKED?

12 ONE OF MY FAVORITES, SLIDE 54, HOW WAS THE ALTERNATIVE?
13 YOU KNOW, IF YOU'RE NOT GOING TO USE THE CLAIMED PATENTED
14 FEATURE, HOW WAS THAT PRESENTED TO PEOPLE IN THESE SURVEYS? AN
15 EMPTY BOX. AN EMPTY SQUARE.

16 HOW CAN YOU MINIMIZE IT MORE THAN BY JUST PUTTING UP AN
17 EMPTY BOX AND AN EMPTY SQUARE?

18 THIS WAS COMPLETELY CONTRIVED. THIS WAS A SHAM SURVEY
19 DONE BY A MAN WHO MAY HAVE -- HE'S AT M.I.T., HAS A PH.D., HE
20 DID THIS FOR MONEY, APPLE PAID HIM, AND HE CAME IN AND
21 PRESENTED YOU WITH A SHAM. I'M JUST -- THAT'S THE WAY IT IS,
22 FOLKS.

23 HOW DO WE KNOW THAT? TAKE A LOOK AT THIS SLIDE 55. LOOK
24 AT HIS CONCLUSIONS. FOR A PHONE THAT COSTS \$149, HE CONCLUDED
25 PEOPLE WOULD PAY, JUST FOR EXAMPLE, \$102 MORE TO HAVE THEIR

1 PARTICULAR VERSION OF AUTOMATIC WORD CORRECTION OR SUGGESTION
2 WHICH THEY DON'T EVEN USE. OKAY?

3 IT'S ABSURD. YOU KNOW THIS IS RIDICULOUS.

4 REMEMBER WHEN MR. PRICE ASKED HIM, YOU KNOW, ISN'T THIS
5 KIND OF ABSURD TO THINK THAT PEOPLE WOULD SPEND THAT MUCH MORE?

6 AND THEN DR. HAUSER WENT KIND OF THE USED CAR SALESMAN'S
7 TRICK, WELL, IT'S ONLY FOUR BUCKS MORE A MONTH. BUT THE PHONE
8 ITSELF IS SIX BUCKS MORE A MONTH.

9 I MEAN, WHAT KIND OF CREDIBILITY -- THIS HAS ABSOLUTELY NO
10 CREDIBILITY.

11 OTHER IRRATIONAL RESULTS, YOU KNOW, UNCONTRADICTED
12 TESTIMONY, 68 PERCENT OF THE RESPONDENTS, IF YOU LOOK AT THE
13 DATA, ACTUALLY PREFERRED HIGHER PRICES FOR PHONES WITH THE SAME
14 FEATURES.

15 IT DID A TERRIBLE JOB -- SLIDE 56 -- IF YOU USED HIS DATA
16 OF ACTUALLY PREDICTING WHAT WOULD HAPPEN IN THE REAL
17 MARKETPLACE. HE PREDICTS WITH HIS DATA, GOING THROUGH ALL THE
18 CHOICE SETS, RUNNING IT THROUGH THE SAWTOOTH SOFTWARE PROGRAM,
19 THAT THE NOTE 2 WOULD OUTSELL THE GS III. IN REAL LIFE, THE
20 GS III OUTSOLD THE NOTE 2 MANY, MANY TIMES MORE.

21 APPLE WANTS YOU TO RELY ON THIS SURVEY. IT IS CENTRAL
22 THAT THEIR DAMAGES CASE, BOTH REASONABLE ROYALTY AND DIMINISHED
23 DEMAND. IT'S CENTRAL TO THEIR CASE. THEY SAY, YOU KNOW,
24 SAMSUNG DIDN'T HAVE -- HAUSER SHOWS THAT IF SAMSUNG DIDN'T HAVE
25 THESE THINGS, YOU'D HAVE 20 TO 45 PERCENT DECLINE IN SALES.

1 TRUST YOUR INSTINCTS. TRUST YOUR COMMON SENSE. THIS
2 SURVEY IS WORTHLESS.

3 NOW WE TURN TO DR. VELLTURO. WHAT DOES HE DO? HE TAKES
4 THOSE RESULTS -- HAUSER'S OUTPUT IS EXPRESSED AS A PERCENTAGE
5 DECLINE IN SALES. HAUSER TAKES THAT, LOOKS AT APPLE'S -- AT
6 SAMSUNG'S SALES NUMBERS, YOU KNOW, FIGURES OUT HOW MANY UNITS
7 THERE ARE, YOU KNOW, DECREASED NUMBER OF UNITS, APPLIES APPLE'S
8 MARKET SHARE AND CONVERTS THAT TO A LOST PROFITS NUMBER.

9 IT'S ALL BASED ON HAUSER. SLIDE 1. DR. VELLTURO
10 ACKNOWLEDGED THAT.

11 FOLKS, IN THE REAL WORLD, IF THESE FEATURES DRIVE 20 TO 45
12 PERCENT OF THE SALES, WHICH IS WHAT HAUSER CONCLUDES, WHY DON'T
13 THEY SHOW UP ANYWHERE IN THE REAL WORLD? YOU SAW A LOT OF
14 EVIDENCE -- SLIDE 2 -- PRODUCED BY THESE COMPANIES, BOTH OF
15 THEM, BEFORE THERE EVER WAS A LAWSUIT, THEY LOOKED AT WHY DO
16 PEOPLE BUY PHONES? WHAT DO THEY RELY ON? WHAT MATTERS TO
17 THEM?

18 UP ON THE CHART WE'VE GOT SOME OF THOSE. YOU'VE SEEN THE
19 BUYER SURVEYS. YOU CAN JOT DOWN THE NUMBERS IF YOU WANT TO GO
20 BACK AND LOOK AT THEM.

21 THESE THINGS NEVER SHOWED UP. APPLE CLAIMED FEATURES JUST
22 AREN'T FACTORS AT ALL.

23 LET ME TURN TO HIS LOST PROFITS CALCULATION. YOU GOT SOME
24 INSTRUCTION FROM THE COURT ON THIS -- THIS IS SLIDE 63 -- AND
25 THIS IS ANOTHER REASON THE DIMINISHED DEMAND THEORY MAKES NO

1 SENSE AT ALL.

2 IT'S -- FOR LOST PROFITS, UNDER THE LAW, YOU MUST FIND
3 THAT BUT FOR, BUT FOR THE INFRINGEMENT, APPLE WOULD HAVE MADE
4 SALES THAT IT OTHERWISE DID NOT HAVE. THAT'S WHAT THE LAW
5 REQUIRES, BUT FOR ACTUAL CAUSATION.

6 AS DR. CHEVALIER'S ANALYSIS SHOWED -- THIS IS SLIDE 4 --
7 THERE'S ABSOLUTELY NO CORRELATION BETWEEN SAMSUNG -- THE
8 PROFITABILITY OF SAMSUNG PHONES AND THE USE OF THEIR CLAIMED
9 TECHNOLOGY. OUR MOST PROFITABLE PHONES ARE THE ONES THAT ARE
10 CHARGED AS BEING LEAST INFRINGING, THE NOTE 2 AND THE
11 GALAXY S III.

12 IF YOU THINK ABOUT IT FOR A MOMENT, THE IDEA THAT APPLE
13 LOST SALES BECAUSE SAMSUNG ALLEGEDLY HAD THESE FEATURES IS,
14 FRANKLY, NONSENSICAL. IMAGINE, FOR EXAMPLE, A CUSTOMER GOING
15 INTO A STORE, GEE, WHAT DO I WANT TO BUY? I WANT TO BUY A
16 PHONE THAT HAS A, YOU KNOW, THREE COMPONENT BACKGROUND SYNCING,
17 I WANT TO MAKE SURE I'VE GOT THAT, AND I WANT AN ANALYZER
18 SERVER, I DON'T WANT SHARED LIBRARIES, I WANT TO MAKE SURE I
19 CAN SEARCH ON THE INTERNET AND ON THE PHONE, I WANT THE TWO
20 HEURISTICS. THESE ARE MORE IMPORTANT TO ME THAN BIG SCREEN OR
21 BATTERY LIFE OR THE REST OF IT.

22 AND BY THE WAY, I THINK DR. ERDEM IS RIGHT. ONLY A TECHNO
23 GEEK WOULD BE GOING AND LOOKING FOR, YOU KNOW, THESE KINDS OF
24 DETAILED IMPLEMENTATIONS.

25 LET'S GET REAL. NOBODY EVER BOUGHT A PHONE TO GET THESE

1 THINGS. EVEN, YOU KNOW, SLIDE TO UNLOCK. I DARE SAY, NOBODY
2 EVER BOUGHT A PHONE BECAUSE THEY WANTED TO GET SLIDE TO UNLOCK.

3 SAMSUNG WOULDN'T BE LOSING SALES IF IT USED CIRCLE UNLOCK,
4 IF IT USED RIPPLE WHICH, YOU KNOW, ITS BEST SELLING GS III
5 PHONE USES.

6 AND BY THE WAY, THEY TRIED TO SUGGEST, WELL, YOU HAVE TO
7 HAVE OUR FORM OF SLIDE TO UNLOCK, IT'S BETTER THAN ALL THE
8 ALTERNATIVES BECAUSE OTHERWISE, YOU KNOW, ACCIDENTAL UNLOCKING
9 IS, YOU KNOW, IT'S, IT'S MORE PROBABLE THAT IT MIGHT HAPPEN.

10 THEY COULDN'T IDENTIFY A SINGLE, NOT ONE, IN THIS WHOLE
11 TRIAL, YOU WERE HERE FOUR WEEKS, CUSTOMER COMPLAINT ABOUT ANY
12 OF SAMSUNG'S OTHER FEATURES, WAYS OF UNLOCKING OF BEING MORE
13 PRONE TO UNLOCK. THERE'S SIMPLY NO EVIDENCE OF THAT.

14 THE IDEA THAT SOME HYPOTHETICAL, YOU KNOW, TECHNO GEEK
15 WOULD BUY AN APPLE PHONE IF SAMSUNG DIDN'T HAVE THESE FEATURES,
16 NOW, I'M GOING TO SWITCH TO APPLE BECAUSE SAMSUNG NO LONGER HAS
17 THESE FEATURES, MAKES NO SENSE.

18 WHY? BECAUSE APPLE DOESN'T HAVE THEM EITHER. YOU NOW
19 KNOW THAT. THAT'S THE THEORY THEY'RE TRYING TO SELL. WE LOST
20 PROFITS BECAUSE SAMSUNG HAS THESE FEATURES, YOU TAKE AWAY THE
21 FEATURES FROM SAMSUNG, THEY'LL BUY OUR PHONES WHEN WE DON'T
22 HAVE THEM EITHER.

23 AT THE TIME OF OPENING STATEMENT, I SAID THREE OUT OF
24 FIVE. THAT WAS AGREED.

25 THE ANALYZER SERVER, AS MR. NELSON SAID, THEY PUT ON NO

1 EVIDENCE, NONE, THAT THEY PRACTICED THAT ANALYZER SERVER
2 PATENT.

3 YOU KNOW THIS WAS AN IMPORTANT ISSUE. YOU KNOW IF THEY
4 PRACTICED IT, THEY WOULD HAVE PUT THAT EVIDENCE IN.

5 AND I'LL LEAVE IT TO YOU TO LOOK AT THE IOS 7, YOU KNOW,
6 THE NEW UNLOCK SCREEN WHICH, BY THE WAY, LOOKS A LOT LIKE THE
7 SAMSUNG GLASS UNLOCK, WHICH HAD COME OUT BEFORE. I'LL LEAVE IT
8 TO YOU TO TAKE A LOOK AT THAT -- THAT'S DEFENSE EXHIBIT 345 --
9 AND YOU DECIDE FOR YOURSELF IF APPLE IS STILL PRACTICING SLIDE
10 TO UNLOCK.

11 NO LOST PROFITS, NO LOST SALES, NO EVIDENCE THAT ANYONE
12 EVER FAILED TO BUY AN IPHONE BECAUSE SAMSUNG HAD THESE
13 FEATURES.

14 SECOND BUCKET OF DAMAGES, OFF THE MARKET.

15 THE THEORY HERE IS, YOU KNOW, BASED ON HOW LONG SAMSUNG --
16 IF SAMSUNG HAD TO DO A DESIGN AROUND, IF WE ACTUALLY DID
17 INFRINGE, WE'RE USING THEIR TECHNOLOGY, WE INFRINGE, WE HAVE TO
18 DO A DESIGN AROUND, WE HAVE TO TAKE OUR PRODUCTS OFF THE MARKET
19 WHILE WE COME UP WITH AN ALTERNATIVE.

20 THEIR THEORY, THEIR THEORY IS, WHILE WE'RE OFF THE MARKET
21 FOR THAT TIME WHILE WE'RE COMING UP WITH AN ALTERNATIVE, APPLE
22 IS GOING TO SELL A LOT MORE PHONES. THAT'S THE OFF THE MARKET
23 LOST, YOU KNOW, LOST PROFITS THEORY.

24 THIS AGAIN APPLIES ONLY TO THE THREE PATENTS. SLIDE 5.
25 DR. VELLTURO ACKNOWLEDGED THIS.

1 NOW, THIS PRESENTS A REALLY IMPORTANT CREDIBILITY ISSUE
2 BECAUSE DR. VELLTURO CAME IN HERE AND HE CHOSE TO GIVE YOU
3 CALCULATIONS FOR ONLY ONE OFF THE MARKET PERIOD, FOUR MONTHS.
4 HE SAID IT'S GOING TO BE FOUR MONTHS.

5 BY THE WAY, HE'S A FINANCIAL GUY. HOW DOES HE GET OFF
6 BEING A TECHNOLOGY GUY? YOU KNOW, A SMARTPHONE EXPERT WHO CAN
7 SAY IT WOULD TAKE FOUR MONTHS? THAT WAS -- THAT'S NOT WITHIN
8 THE SCOPE OF HIS EXPERTISE.

9 BUT HE CAME IN AND SAID, I'M GOING TO GIVE YOU THE NUMBERS
10 ABOUT WHAT OUR LOST PROFITS WOULD BE IF SAMSUNG WERE OFF THE
11 MARKET FOR FOUR MONTHS, NOT ONE MONTH, NOT TWO MONTHS, NOT
12 THREE MONTHS. AND THIS IS SLIDE 6.

13 INTERESTINGLY, HE HAD DONE A REPORT BEFORE WHEN THERE WERE
14 A DIFFERENT MIX OF PRODUCTS AT ISSUE AND HE ACKNOWLEDGED IN HIS
15 REPORT BEFORE, HE HAD DONE CALCULATIONS BOTH AT FOUR MONTHS AND
16 AT ONE MONTH.

17 AND WHEN HE WAS ON THE STAND, HE ACKNOWLEDGED TO ME THAT
18 HE HAD DONE THE ONE MONTH CALCULATION BEFORE, HE KNEW HOW TO DO
19 IT, BUT HE DIDN'T COME HERE THIS TIME AND PRESENT YOU WITH THAT
20 NUMBER. HE ONLY PRESENTED YOU WITH THE FOUR MONTH FIGURE.

21 THAT'S, YOU KNOW, CONSISTENT WITH APPLE'S APPROACH IN THIS
22 WHOLE CASE, LADIES AND GENTLEMEN, GOING FOR THE GRAND SLAM HOME
23 RUN. HE COULD DO THE ONE MONTH, HAD DONE IT BEFORE, BUT CHOSE
24 ONLY TO PRESENT THE LONGER PERIOD WHICH TRANSLATES TO A LOT
25 MORE MONEY.

1 AS DR. CHEVALIER TESTIFIED -- THIS IS SLIDE 7 -- IN HIS
2 FIRST SET OF CALCULATIONS, THE DIFFERENCE BETWEEN ONE MONTH OFF
3 THE MARKET AND FOUR MONTHS OFF THE MARKET WAS HUNDREDS OF
4 MILLIONS OF DOLLARS.

5 ON CROSS-EXAMINATION, HE TOLD US -- SLIDE 8 -- HE SAID HE
6 HAD NOT DONE THE ONE MONTH CALCULATION, BUT ACKNOWLEDGED THAT
7 IT WOULD BE A VERY SMALL NUMBER.

8 I CONFRONTED HIM WITH IT. I SAID, "IF YOU RAN THAT NUMBER
9 FOR ONLY ONE MONTH, IT'S ONLY \$17.5 MILLION, ISN'T IT, SIR?"

10 AND HE SAID, "I DON'T KNOW, I CAN'T DO THE MATH SITTING
11 HERE. IT DOES BECOME QUITE SMALL.

12 "YOU HAVEN'T DONE THAT CALCULATION, SIR?

13 "NO. I KNOW IT'S A SMALL NUMBER."

14 HE WASN'T TELLING THE TRUTH. HE WASN'T TELLING THE TRUTH.
15 HE HAD DONE THAT CALCULATION.

16 REMEMBER, THIS IS A GUY THEY'VE HIRED 15 TIMES NOW. THIS
17 CASE ALONE THEY PAID HIM \$2.3 MILLION. HE WASN'T GOING TO COME
18 IN HERE AND PRESENT A \$17.5 MILLION NUMBER. HE WASN'T GOING TO
19 DO THAT ARITHMETIC THAT HE HAD DONE BEFORE, COULD DO AGAIN TO
20 SHOW WHAT ONE MONTH OFF THE MARKET DAMAGES WOULD BE.

21 WE KNOW THAT FOR TWO OF THE PATENTS, THAT NUMBER IS ZERO.
22 THIS WAS UNCONTRADICTED TESTIMONY OF DR. CHEVALIER.

23 AND I THINK THIS IS PART OF THE REASON WHY DR. VELLTURO
24 DIDN'T COME BACK AND TAKE THE STAND. I'LL TALK ABOUT IT MORE.
25 HE WAS HERE. HE DIDN'T COME BACK AND EXPLAIN BECAUSE HE DIDN'T

1 WANT TO BE ASKED THAT QUESTION, WHAT IS THE ONE MONTH?

2 AND WE WOULDN'T NEED FOUR MONTHS. YOU KNOW, WE'RE TALKING
3 ABOUT SAMSUNG, ONE OF THE, YOU KNOW, GREATEST, LARGEST, MOST
4 IMPORTANT TECHNOLOGY COMPANIES IN THE WORLD. THEY COULD DO
5 THESE CHANGES, IF THEY HAD TO DO IT, IN ONE MONTH. HERE'S THE
6 EVIDENCE ON THAT -- SLIDE 10 -- THE TESTIMONY OF DR. GREENBERG.
7 HE SAID THAT, YOU KNOW, THE CIRCLE UNLOCK, WE ALREADY HAD IT,
8 WE COULD SIMPLY SWAP THAT OUT.

9 SLIDE 11, THE TESTIMONY OF YOUNGMI KIM, WE ASKED HER, HOW
10 LONG DID IT TAKE YOU TO COME UP WITH THE RIPPLE DESIGN? SHE
11 SAID ABOUT 280 HOURS.

12 SLIDE 12, HOW ABOUT THE CIRCLE UNLOCK, HOW LONG DID IT
13 TAKE YOU TO COME UP WITH THAT? SHE SAID, WELL, IT TOOK ABOUT A
14 MONTH TO DO THAT.

15 YOU KNOW, WORD SUGGESTION -- THIS IS PROFESSOR WIGDOR --
16 WE ALREADY HAD THE DART KEYBOARD. IT WAS ALSO RELEASED WITH
17 THE GALAXY S III. WE HAD ORIGINALLY RELEASED IT ON -- WITH THE
18 DART PHONE IN JUNE OF 2011. HUGELY SUCCESSFUL.

19 WE HAD THOSE ALTERNATIVES. THEY'RE IN THE CAN. IT WOULD
20 HAVE BEEN NO CHALLENGE JUST TO SIMPLY SWAP THOSE OUT.

21 FOUR MONTHS TO DO THAT? GIVE ME A BREAK. NO EVIDENCE WAS
22 PRESENTED TO YOU.

23 SLIDE 14. THE OTHER -- YOU KNOW, THE ANALYZER SERVER
24 PATENT, SOMETIMES CALLED LINKS TO STRUCTURES, YOU HEARD THE
25 TESTIMONY FROM DIANNE HACKBORN. YOU KNOW, YOU ONLY HAVE TO

1 CHANGE ONE THING AND YOU NO LONGER INFRINGE. YOU REMEMBER
2 THAT. IT HAS TO PRACTICE EVERY SINGLE LIMITATION OF THE
3 PATENT.

4 SHE SAID MAKING THE CHANGE, SHE'S TALKING ABOUT THE CHANGE
5 IN THE MENU, IT COULD HAVE BEEN DONE IN A DAY.

6 ONE MONTH WAS PLENTY OF TIME.

7 SO WHAT IS APPLE'S FALLBACK POSITION ON THIS? APPLE'S
8 FALLBACK POSITION IS, WELL, YOU MIGHT HAVE BEEN ABLE TO DO IT,
9 BUT THE CARRIERS WOULD OBJECT TO IT, OR THEY WOULD PUT YOU
10 THROUGH A BUREAUCRATIC PROCESS. YOU WOULDN'T BE ABLE TO GET
11 THE CARRIER APPROVAL IN TIME.

12 THAT MAKE NO SENSE AT ALL. YOU'VE SEEN THE TESTIMONY
13 ABOUT HOW THE CARRIERS ARE FRUSTRATED WITH APPLE. THEY'RE
14 CAPPING THEM. THEY'RE MORE EXPENSIVE BECAUSE THEY -- YOU KNOW,
15 THEY HAVE THE SUBSIDIES THAT THEY HAVE TO PAY.

16 WHY ON EARTH WOULD THE CARRIERS GET IN THE WAY AND BE AN
17 OBSTACLE TO OUR, YOU KNOW, IMPLEMENTING THESE CHANGES?

18 YOU HEARD THE TESTIMONY FROM MR. DICARLO -- SLIDE 15 -- HE
19 SAID WE CAN GET APPROVAL FROM CARRIERS LIKE, IN A MATTER OF
20 DAYS.

21 I DON'T HAVE TIME TO TALK ABOUT THE CAPACITY ISSUE. THEY
22 HAVE TO PROVE THAT THEY WOULD HAVE THE CAPACITY -- THIS IS
23 SLIDE 57 -- THAT THEY WOULD HAVE THE MARKETING AND
24 MANUFACTURING CAPACITY.

25 YOU HEARD THE TESTIMONY OF MR. SEXTON -- SLIDE 16 AND

1 17 -- HOW APPLE WAS CONSISTENTLY CAPACITY LIMITED IN BEING ABLE
2 TO MAKE THE IPHONE.

3 THE IDEA THAT IN ONE MONTH, OR EVEN FOUR MONTHS, THEY
4 COULD HAVE CRANKED UP THE LINE AND BEEN ABLE TO MAKE MILLIONS
5 MORE PHONES MAKES NO SENSE AT ALL.

6 THIRD, THE REASONABLE ROYALTY, THIS IS THE HYPOTHETICAL
7 NEGOTIATION. YOU KNOW, THIS IS, YOU KNOW -- SLIDE 18 -- THE
8 EDGE -- DR. VELLTURO'S SO-CALLED EDGEWORTH BOX.

9 AND I JUST LOVE THIS LITTLE STORY. HE COMES -- BASED ON
10 HAUSER, HE COMES UP WITH THESE NUMBERS HERE AND HE SAYS THE
11 PARTIES ARE GOING TO BE FAR APART IN THIS NEGOTIATION. THERE'S
12 NOT GOING TO BE A WAY -- YOU KNOW, THEY'RE GOING TO BE AT AN
13 IMPASSE. THE NUMBERS ARE FAR APART.

14 SO WHAT WOULD HAPPEN? WHAT WOULD HAPPEN DID HE SAY?
15 TOTAL CAPITULATION BY SAMSUNG. SAMSUNG WOULD SAY, OKAY, APPLE,
16 WE'LL PAY YOUR NUMBER. YOU KNOW, FORGET IT. WE'LL PAY WHAT
17 YOU ASKED.

18 YOU KNOW, I THINK IF THERE'S ONE THING YOU KNOW ABOUT
19 SAMSUNG, IT'S THAT THEY'RE NOT JUST SIMPLY GOING TO CAVE AND
20 CAPITULATE.

21 BUT DR. VELLTURO HAS AN ANSWER TO THAT. WELL, YOU KNOW,
22 SAMSUNG WOULD DO IT. WHY? BECAUSE THEY'D JUST RAISE THEIR
23 PRICES AND IT WOULDN'T AFFECT THEIR SALES AT ALL.

24 IF ANY COMPANY COULD SIMPLY RAISE ITS PRICES WITH NO
25 IMPACT ON ITS SALES, ANY COMPANY WOULD DO THAT AND THEY

1 WOULDNT WAIT UNTIL SOME HYPOTHETICAL NEGOTIATION. THEY'D DO
2 IT TOMORROW. I MEAN, THIS IS JUST A FANTASY.

3 REMEMBER HOW PROFESSOR CHEVALIER CAME UP WITH A REASONABLE
4 ROYALTY USING FIVE DIFFERENT METHODS? THIS IS SLIDE 20. SHE
5 WENT THROUGH THEM ONE AT A TIME.

6 REMEMBER, THIS IS AN EXPERT THAT BOTH SETS OF LAWYERS AT
7 DIFFERENT TIMES HAVE RETAINED. YOU CAN'T GET ANYBODY MORE
8 CREDIBLE THAN SOMEBODY THAT BOTH SIDES HAVE USED.

9 SHE WENT THROUGH THE BENCHMARKS, REAL WORLD BENCHMARKS.
10 THE ANALYTICAL APPROACH, YOU KNOW, TRYING TO SEE IF THERE'S
11 SOME CORRELATION BETWEEN PROFITABILITY AND THE USE OF THE
12 PATENTS, LOOKING AT THEIR OPERATING SYSTEM UPDATES, WHAT THEY
13 FILE WITH THE SEC, WHAT APPLE TELLS THE FEDERAL GOVERNMENT.

14 ITS UPDATES INCLUDING THINGS LIKE TURN-BY-TURN NAVIGATION,
15 FACETIME, FIND MY IPHONE.

16 WHAT THEY'RE WORTH, POSITIONS THAT THEY HAVE TAKEN, YOU
17 KNOW, IN OTHER CASES, LOOKING AT PRODUCT REVIEWS, THE REAL
18 WORLD PRICES FOR APPS, LOOKING AT ALL THESE THINGS.

19 AND THEN SHE LOOKED AT THE GEORGIA-PACIFIC FACTORS AND
20 SAID THAT SHOULD BE AN UPWARD ADJUSTMENT BECAUSE THEY ARE
21 COMPETITORS AND APPLE HAS A CERTAIN POLICY WITH RESPECT TO IT,
22 SO SHE ADJUSTED IT UPWARDS TO \$.35, A ROYALTY OF \$.35 A PHONE.

23 WHAT'S SIGNIFICANT ABOUT THIS? SHE GAVE YOU REAL WORLD
24 DATA. APPLE DID NOT COME IN HERE -- AND SHE ALSO SAID SHE
25 LOOKED AT 200 DIFFERENT SMARTPHONE LICENSES FOR THE PURPOSE OF

1 DETERMINING THAT A LUMP SUM ROYALTY WOULD BE APPROPRIATE.

2 THEY DIDN'T PRESENT YOU WITH ANY REAL WORLD DATA AT ALL.
3 IT WAS ALL HAUSER.

4 IF WE LOOK AT SLIDE 21 -- THIS IS CONFIDENTIAL -- YOU CAN
5 GO BACK AND LOOK AT THIS. THIS IS HER BREAKDOWN ASSUMING A
6 REASONABLE ROYALTY OF -- REMEMBER, WE'RE NOT SAYING ANYTHING IS
7 OWED TO THEM -- BUT ASSUMING A REASONABLE ROYALTY WAS OWED,
8 THIS IS THE NUMBERS. YOU KNOW, YOU HAVE TO LOOK AT IT BY
9 PATENT, BY PHONE, AND SHE GIVES A GROSS NUMBER DOWN THERE ON
10 THE BOTTOM.

11 WHEW.

12 (LAUGHTER.)

13 MR. QUINN: WHERE IS DR. VELLTURO? WHERE WAS
14 DR. VELLTURO? YOU KNOW, WHEN DR. CHEVALIER TESTIFIED -- YOU
15 KNOW, HE WAS HERE MOST OF THE TRIAL, DISAPPEARED FOR A FEW
16 DAYS. LAST MONDAY, DID YOU SEE HIM HERE? HE WAS SITTING HERE.
17 THEY BROUGHT HIM BACK.

18 THEY COULD HAVE CALLED HIM. HE WAS HERE TO LISTEN TO WHAT
19 SHE HAD TO SAY. IF HE HAD ANYTHING TO SAY IN RESPONSE TO REBUT
20 IT, HE COULD HAVE GOTTEN UP AND TAKEN THE STAND.

21 HE DIDN'T TAKE THE STAND. HE LEFT SO MANY QUESTIONS
22 UNANSWERED.

23 AND I'M ABOUT TO GET THE HOOK HERE, SO I'M JUST GOING TO
24 JUMP FORWARD.

25 THAT NUMBER, YOU KNOW, \$2 BILLION, YOU KNOW, IT'S THE

1 POWER OF SUGGESTION, YOU KNOW?

2 HOW BIG IS A REDWOOD TREE? IF I TELL YOU A REDWOOD TREE
3 IS 2,000 FEET HIGH, YOU'D SAY, NO, NO, IT'S NOT 2,000 FEET
4 HIGH.

5 IF I ASK YOU, WELL, HOW BIG DO YOU REALLY THINK IT IS?
6 AND YOU SAY -- WELL, IT'LL INFLUENCE YOU. YOU'LL SAY, WELL,
7 1500 FEET.

8 OTHER PEOPLE, YOU DON'T GIVE THEM THAT NUMBER, YOU SAY,
9 HOW BIG IS A REDWOOD TREE? THEY'LL SAY, OH, MAYBE 200, 300
10 FEET.

11 IT'S THE POWER OF SUGGESTION. THAT'S WHY THEY PUT THAT
12 NUMBER OUT THERE. IT'S THE ONLY REASON.

13 THEY'LL BE DANCING IN THE STREETS OF CUPERTINO IF YOU GIVE
14 THEM \$100 MILLION. THEY DON'T EXPECT IT.

15 AN UNSUPPORTED NUMBER -- DON'T COMPROMISE FOLKS.
16 DR. VELLTURO, REMEMBER, WHEN HE WAS ON THE STAND, I SAID, HOW
17 IS THE JURY GOING TO COME UP WITH THIS? HAUSER GAVE THEM ONLY
18 ONE NUMBER. WHAT ARE THEY GOING TO DO, DO THEIR OWN SURVEY?

19 HE SAYS, WELL, THE NUMBERS WOULD HAVE BEEN TO BE ADJUSTED.
20 WELL, THAT'S AN INVITATION TO YOU TO VIOLATE YOUR OATH AS
21 JURORS AND GO OUTSIDE THE EVIDENCE, BECAUSE HE ONLY PRESENTED
22 THE ONE NUMBER FROM HAUSER ON THOSE TWO BASES. IT'S COMPLETELY
23 UNSUPPORTED.

24 AN UNSUPPORTED BIG NUMBER DOESN'T GET SUPPORTED BY
25 DIVIDING IT IN HALF OR DIVIDING IT BY 100. YOU STILL MUST MAKE

1 YOUR DECISION BASED ON THE EVIDENCE.

2 DON'T BE INFLUENCED -- THE WAY TO DEAL WITH AN OVERSTATED
3 BIG NUMBER IS NOT TO CREDIT IT, NOT TO ADJUST IT, NOT TO GIVE
4 IT ANY CREDENCE AT ALL BECAUSE IT'S NOT ENTITLED TO ANY
5 CREDENCE.

6 AND I JUST WANT TO CONCLUDE BY SAYING WHAT THIS CASE IS
7 REALLY ABOUT. IT REALLY IS ABOUT COMPETITION. IT'S ABOUT
8 COMPETITION WITH APPLE AND IT'S REALLY -- AND ITS ONLY
9 COMPETITOR, AND THAT'S ANDROID.

10 FOR THOSE PEOPLE WHO BELIEVE THAT APPLE HAS BEEN A GREAT
11 AMERICAN COMPANY AND ADMIRE APPLE FOR THE WONDERFUL THINGS THAT
12 IT'S DONE IN THE PAST, I THINK WHAT APPLE NEEDS TO UNDERSTAND
13 IS THAT THE ANSWER TO THAT INNOVATOR'S DILEMMA THAT STEVE JOBS
14 TALKED ABOUT IS NOT HERE IN COURTROOMS SUING PEOPLE.

15 THE ANSWER IS TO GO BACK AND COME OUT WITH SOME MORE GREAT
16 PRODUCTS, LIKE THAT WATCH WE'VE BEEN HEARING ABOUT, OR THE
17 PHONES, YOU KNOW, THE LARGE SCREEN PHONES THAT WE'VE BEEN
18 HEARING ABOUT, OR THE SET TOP BOX, THOSE KINDS OF THINGS.

19 THAT'S WHAT APPLE SHOULD GET BACK TO DOING. THAT'S WHERE
20 THEY'LL FIND THE SOLUTIONS TO INNOVATION DILEMMA.

21 THEY WANT TO MONOPOLIZE THIS MARKET. THEY WANT TO ATTACK
22 GOOGLE AND ANDROID BY ATTACKING THE MOST SUCCESSFUL ANDROID
23 MAKER.

24 IF THEY CAN CRIPPLE THE MOST SUCCESSFUL ANDROID MAKER,
25 THEY'LL GO A LONG WAYS TOWARD ACCOMPLISHING THEIR GOAL.

1 THIS SUIT WAS A LONG SHOT. THEY CYNICALLY THOUGHT IT WAS
2 WORTH A CHANCE. IT'S IN OUR BACKYARD. AFTER ALL, THEY'RE
3 SAMSUNG.

4 THEY CERTAINLY WEREN'T GOING TO TAKE ON THE LOCAL COMPANY,
5 GOOGLE, IN MOUNTAIN VIEW, AND THEY DIDN'T.

6 THEY KNOW THEY'RE NOT ENTITLED TO A NICKEL. DON'T FALL
7 FOR IT.

8 WE KNOW YOU WON'T FALL FOR IT. WE'RE COUNTING ON YOU TO
9 USE YOUR SENSE OF FAIRNESS AND YOUR COMMON SENSE.

10 THE PEOPLE OF SAMSUNG, MANY OF WHOM ARE HERE AND MANY OF
11 WHOM ARE IN THE OVERFLOW COURTROOM NEARBY, BELIEVE THAT SAMSUNG
12 CAN GET JUSTICE, YES, THAT SAMSUNG CAN GET JUSTICE HERE IN
13 APPLE'S BACKGROUND.

14 BASED ON THE EVIDENCE PRODUCED IN THIS TRIAL, YOU HAVE THE
15 TOOLS AND THE POWER TO MAKE SURE THAT JUSTICE IS DONE.

16 THANK YOU FOR YOUR SERVICE. THANK YOU FOR YOUR ATTENTION.

17 THE COURT: THE TIME IS 2:05.

18 MR. LEE: YOUR HONOR, I THINK I HAVE 29 MINUTES.

19 THE COURT: YOU HAVE 29 MINUTES, THAT'S CORRECT.

20 MR. LEE: AND DO YOU WANT TO TAKE A BREAK AT THE
21 NORMAL TIME OR SHOULD WE JUST GO STRAIGHT THROUGH? IT'S UP TO
22 YOU AND THE JURY.

23 THE COURT: OH, WOULD YOU LIKE TO TAKE JUST A QUICK
24 BATHROOM BREAK NOW?

25 MR. LEE: AND THEN GO STRAIGHT THROUGH?

1 THE COURT: I THINK SOMEONE HAS REQUESTED THAT.

2 OKAY. LET'S JUST TAKE A TEN MINUTE BREAK. OKAY. THANK
3 YOU.

4 (JURY OUT AT 2:06 P.M.)

5 THE COURT: ALL RIGHT. THE JURORS HAVE LEFT THE
6 COURTROOM. LET'S TAKE OUR TEN MINUTE BREAK. THANK YOU.

7 (RECESS FROM 2:06 P.M. UNTIL 2:16 P.M.)

8 (JURY IN AT 2:16 P.M.)

9 THE COURT: OKAY. WELCOME BACK. PLEASE TAKE A SEAT.
10 ARE YOU READY, MR. LEE?

11 MR. LEE: READY, YOUR HONOR.

12 THE COURT: ALL RIGHT. 2:17. GO AHEAD, PLEASE.

13 **(MR. LEE GAVE HIS REBUTTAL CLOSING ARGUMENT ON BEHALF OF**
14 **THE PLAINTIFF.)**

15 MR. LEE: GOOD AFTERNOON, LADIES AND GENTLEMEN. I'M
16 THE LAST PERSON THAT YOU HAVE TO LISTEN TO, THE LAST ARGUMENT
17 YOU'RE GOING TO HEAR, AND I'M GOING TO ASK YOU ONE THING AT THE
18 BEGINNING AND ONE THING AT THE END.

19 AND THE THING AT THE BEGINNING IS THIS: YOU'VE HEARD FIVE
20 LAWYERS TALK TO YOU ABOUT SOME COMPLICATED MATERIAL, AND I HAVE
21 29 MINUTES, SO MY FIRST REQUEST IS, HANG IN THERE WITH ME.
22 I'LL GET IT DONE IN 29 MINUTES, OR LESS NOW. BUT HANG IN THERE
23 WITH ME BECAUSE WE HAVE SOME IMPORTANT, IMPORTANT THINGS TO
24 SAY.

25 LADIES AND GENTLEMEN, THERE'S AN OLD SAYING AMONG TRIAL

1 LAWYERS, AND IT GOES LIKE THIS: IF THE FACTS ARE GOOD FOR YOU,
2 FOCUS ON THE FACTS. IF THE LAW IS GOOD FOR YOU, FOCUS ON THE
3 LAW. IF THE LAW AND THE FACTS ARE BAD FOR YOU, ATTACK.
4 ATTACK. ATTACK.

5 AND THAT HAS -- THAT IS WHAT SAMSUNG HAS DONE. IT HAS
6 ATTACKED APPLE. IT HAS ATTACKED ITS SCIENTISTS. IT HAS
7 ATTACKED ITS EXECUTIVES. IT HAS ATTACKED ITS EXPERTS. AND IT
8 HAS ATTACKED ITS LAWYERS.

9 MR. PRICE: YOUR HONOR, I OBJECT. THIS IS BEYOND THE
10 SCOPE. THIS IS SUPPOSED TO BE REBUTTAL TO THE OFFENSIVE CASE.

11 THE COURT: OVERRULED.

12 MR. LEE: YOU'VE HEARD THE WORDS IN OPENING,
13 DISHONEST, MISLEADING. YOU'VE HEARD THEM AGAIN TODAY.
14 MISLEADING. DISHONEST. SHAM.

15 WHY DOES SAMSUNG RESORT TO THOSE CHARACTERIZATIONS?

16 BECAUSE, AS MR. MCELHINNY SHOWED, AND I WILL SHOW YOU ON
17 SAMSUNG'S CLAIMS, THE FACTS AND THE LAW ARE WITH APPLE.

18 NOW, YOU'VE BEEN WITH MR. KREVANS, MR. MCELHINNY, OUR
19 COLLEAGUES AND ME FOR A MONTH NOW. I'LL LET YOU JUDGE, I'LL
20 LET YOU JUDGE WHETHER THE ATTACKING WERE FAIR.

21 I INSTEAD WILL CONCENTRATE ON THE EVIDENCE AND THE LAW.

22 AND I'LL ADDRESS SAMSUNG'S CLAIMS, AND I'D LIKE YOU TO DO
23 ONE THING AS WE DO IT. FOCUS ON WHAT SAMSUNG SAYS WHEN IT'S
24 THE DEFENDANT, AND COMPARE THAT TO WHAT SAMSUNG SAYS WHEN IT'S
25 THE PLAINTIFF. BECAUSE, LADIES AND GENTLEMEN, YOU WILL FIND

1 THAT THEIR POSITIONS ARE IRRECONCILABLY INCONSISTENT, EXCEPT
2 FOR ONE THING, AND I'LL SHOW YOU THAT THEY'RE INCONSISTENT
3 ACROSS THE BOARD.

4 THE ONE EXCEPTION IS THIS: IT'S SAMSUNG'S CONSTANT EFFORT
5 TO CHEAPEN THE VALUE OF THE PATENTS.

6 MR. JOHNSON GOT UP TO START HIS CLOSING ON SAMSUNG'S
7 PATENTS AND HE STARTED, HE STARTED TALKING ABOUT APPLE'S DAMAGE
8 CLAIM.

9 WELL, LADIES AND GENTLEMEN, WE DO HAVE THAT CLAIM. IT'S
10 NOT SOMETHING WE'VE MADE UP AS MR. QUINN SUGGESTS. WE BELIEVE
11 IN IT. WE THINK IT'S ACCURATE. WE STAND BY IT.

12 NOW, I BEGAN MY OPENING ON SAMSUNG'S PATENTS IN 2010,
13 AUGUST 2010, AND I'M GOING TO TAKE YOU BACK THERE NOW BECAUSE
14 YOU'VE HEARD A LITTLE BIT MORE ABOUT THAT MEETING.

15 AS YOU'VE NOW HEARD DIRECTLY, DIRECTLY FROM SAMSUNG'S
16 DIRECTOR OF LICENSING, JON WON LEE, HERE IS WHAT HAPPENED AT
17 THAT MEETING. APPLE TOLD SAMSUNG THAT IT COPIED APPLE'S
18 PATENTS. APPLE TOLD SAMSUNG THAT IT HAD INFRINGED APPLE'S
19 PATENTS.

20 MR. PRICE: OBJECTION. BEYOND THE SCOPE OF REBUTTAL.

21 MR. LEE: IT IS NOT, YOUR HONOR. THIS WAS THE
22 STARTING POINT FOR THE PURCHASE OF SAMSUNG'S PATENTS.

23 THE COURT: OVERRULED.

24 GO AHEAD, PLEASE.

25 MR. LEE: APPLE ASKED SAMSUNG TO STOP.

1 AS I SAID TO YOU IN MY OPENING, THIS WAS A CRITICAL MOMENT
2 IN TIME. SAMSUNG COULD HAVE STOPPED. THEY COULD HAVE
3 INVENTED, INNOVATED ON ITS OWN. THEY COULD HAVE STOPPED
4 INFRINGING.

5 OR IT COULD HAVE CHOSEN THE ALTERNATIVE.

6 AND THIS IS WHAT THE ALTERNATIVE WAS: AFTER APPLE ASKED
7 THEM TO STOP COPYING, AFTER APPLE ASKED THEM TO STOP
8 INFRINGING, AFTER APPLE HAD SUED, SAMSUNG DECIDED TO PURCHASE
9 SOME PATENTS AND THEN SELECTED TWO OLD PATENTS TO SUE APPLE ON.

10 AND SAMSUNG CHOSE THOSE PATENTS, AND THEY CHOSE THOSE
11 PATENTS FOR A REASON, AND I THINK THE EVIDENCE WILL MAKE CLEAR
12 TO YOU JUST WHY.

13 NOW, MR. QUINN TOLD YOU IN HIS OPENING THAT SAMSUNG HAS
14 THE SECOND MOST PATENTS RECEIVED IN THE UNITED STATES FOR A
15 GIVEN YEAR.

16 AS WE TOLD YOU IN OUR OPENING, YOU WILL NOT SEE, AND YOU
17 HAVE NOT SEEN, ONE OF THOSE PATENTS. YOU HAVE NOT SEEN A
18 SINGLE SAMSUNG PATENT THAT WAS INVENTED BY A SAMSUNG ENGINEER.
19 YOU HAVE NOT SEEN A SINGLE SAMSUNG PATENT THAT RESULTS FROM THE
20 WORK OF SAMSUNG.

21 AND AS I TOLD YOU, THERE IS A REASON FOR THAT. AS WE SAID
22 IN OUR OPENING, THE REASON IS APPLE HAS BEEN THE INNOVATOR, AND
23 IN THIS FIELD, THE REASON YOU'RE NOT SEEING SAMSUNG PATENTS IS
24 SAMSUNG HAS BEEN THE FAST FOLLOWER.

25 YOU DON'T HAVE TO TAKE MY WORD FOR IT. THIS IS DX 431,

1 PAGE 5. THIS IS WHAT SAMSUNG SAID ABOUT ITSELF, A FAST
2 FOLLOWER.

3 AND THIS IS WHAT MR. PENDLETON SAID UNDER
4 CROSS-EXAMINATION, AND IT'S IMPORTANT BECAUSE IT EXPLAINS WHY
5 YOU SEE THE TWO PATENTS THAT I'M GOING TO TALK TO YOU ABOUT
6 THIS AFTERNOON.

7 MR. PENDLETON ADMITTED JUST THIS.

8 "QUESTION: A FAST FOLLOWER IS SOMEONE WHO LETS SOMEONE
9 ELSE INTRODUCE THE INNOVATIVE PRODUCT AND THEN QUICKLY FOLLOWS
10 WITH THEIR OWN PRODUCT; CORRECT?

11 "THAT IS CORRECT.

12 "QUESTION: SAMSUNG HAS BEEN CALLED A FAST FOLLOWER;
13 CORRECT?

14 "ANSWER: YES.

15 "QUESTION: IT HAS BEEN SPECIFICALLY CALLED A FAST
16 FOLLOWER IN THE SMARTPHONE WORLD; CORRECT?

17 "CORRECT."

18 NOW, THERE'S A SECOND REASON YOU HAVEN'T SEEN A SAMSUNG
19 PATENT ASSERTED AGAINST US, AND MR. PENDLETON GAVE YOU THAT
20 ANSWER AS WELL. HE TOLD YOU THAT SAMSUNG WOULD NOT LICENSE ONE
21 OF ITS PATENTS FOR PENNIES A UNIT.

22 SAMSUNG WAS NOT GOING TO COME BEFORE YOU WITH A PATENT
23 THAT RESULTED FROM SAMSUNG WORK, LIKE NEAR FIELD COMMUNICATION,
24 AND TELL YOU THAT IT WAS INFRINGED, BUT THAT IT WOULD LICENSE
25 IT FOR \$.35 A UNIT. IT WASN'T GOING TO SAY THAT. IT COULDN'T

1 SAY THAT. MR. PENDLETON TOLD YOU THAT.

2 SO WHAT DID SAMSUNG DO? SAMSUNG WENT OUT AND PURCHASED A
3 GROUP OF PATENTS AND IT SELECTED TWO OLDER PATENTS TO PUT
4 BEFORE YOU TO CLAIM THAT THE PATENTS WERE NOT WORTH MUCH.

5 NOW, THE EVIDENCE ESTABLISHES BOTH PATENTS, BOTH PATENTS
6 PURCHASED BY SAMSUNG AND PUT BEFORE YOU WERE OLD TECHNOLOGIES.

7 THE EVIDENCE ESTABLISHED, AND I'LL GO THROUGH IT IN A
8 LITTLE BIT MORE DETAIL, THAT THE IPHONE AND THE IPOD TOUCH USE
9 DIFFERENT TECHNOLOGIES.

10 MR. GARCIA AND MR. MILLET CAME AND APPEARED BEFORE YOU.
11 THEY DESCRIBED THE ENORMOUS INVESTMENT OF TIME AND EFFORT IN
12 DEVELOPING THESE NEW TECHNOLOGIES, THE TECHNOLOGIES THAT
13 SAMSUNG NOW SAYS INFRINGES.

14 THERE IS NOT A SHRED OF EVIDENCE THAT THE PATENTS WERE
15 COPIED, THAT THE TECHNOLOGY WAS COPIED, THAT THE PRODUCTS WERE
16 COPIED.

17 AND I SHOULD SAY PARENTHETICALLY, THERE'S BEEN SOME TALK
18 ABOUT COPYING A PATENT. AS YOU KNOW FROM THE VIDEO, A PATENT
19 APPLICATION GETS FILED, BUT IT DOESN'T ISSUE FOR SEVERAL YEARS,
20 BUT IN THE MEANTIME, THERE'S A LOT OF --

21 MR. PRICE: OBJECTION, YOUR HONOR. THIS IS NOT
22 OFFENSIVE CASE.

23 THE COURT: OVERRULED.

24 MR. LEE: THE EVIDENCE HAS REVEALED TO YOU JUST WHY
25 SAMSUNG SELECTED THESE TWO OLD PATENTS. SAMSUNG'S TOTAL

1 DAMAGES, AS MR. JOHNSON TOLD YOU, FOR THESE TWO PATENTS IS JUST
2 OVER \$6 MILLION. 6,158,000.

3 LET'S START WITH THE '449.

4 DO YOU REMEMBER MR. PARULSKI, WHO TESTIFIED AS SAMSUNG'S
5 EXPERT? HE TOLD YOU THAT HE HAS BEEN PAID 250,000 ALONE.

6 DOES IT MAKE SENSE TO YOU THAT SOMEONE WOULD PAY \$250,000
7 TO AN EXPERT, SETTING ASIDE WHAT THE LAWYERS ARE GETTING PAID,
8 TO PURSUE A \$168,000 CLAIM?

9 IT MAKES SENSE ONLY IF YOU HAVE ONE PURPOSE, TO TRY TO
10 CONVINCE FOLKS, FOLKS LIKE YOU, THAT THE PATENTS AREN'T WORTH
11 MUCH.

12 YOU ALSO NOW KNOW THAT THEY HIRED FOUR EXPERTS,
13 DR. SCHONFELD, DR. RAO, MR. PARULSKI, AND DR. KEARL, WHO IN
14 TOTAL WERE PAID OVER \$5 MILLION -- AGAIN, WITHOUT WHAT THE
15 LAWYERS HAVE BEEN PAID -- TO PURSUE A \$6 MILLION CLAIM.

16 DOES THAT MAKE SENSE? ONLY IN ONE CIRCUMSTANCE, IF YOU'RE
17 TRYING TO DEVALUE PATENTS, ALL PATENTS.

18 AND THIS WAS AN INTENTIONAL STRATEGY. AS DR. KEARL
19 TESTIFIED DURING HIS QUICK TESTIMONY ON DAMAGES, HE USED A \$.99
20 UPGRADE FOR FACETIME IN HIS ANALYSIS.

21 BUT ON CROSS-EXAMINATION, HE AGREED THAT THE ACTUAL VALUE
22 OF FACETIME WAS MANY, MANY TIMES HIGHER.

23 WHY WOULD YOU USE -- WHY WOULD YOU USE AN ARTIFICIALLY LOW
24 NUMBER? ONLY ONE REASON. THEY'RE THE PLAINTIFF. ONLY ONE
25 REASON. TO DEVALUE, TO CHEAPEN, TO CONVINCE YOU THAT THE

1 PATENTS ARE NOT WORTH MUCH.

2 BUT THIS STRATEGY OF DEVALUING PATENTS WAS NOT IN
3 ISOLATION. MR. PRICE TOLD YOU IN HIS OPENING TODAY THAT IT'S
4 IMPORTANT TO LOOK AT WHAT WAS GOING ON WHEN THESE EVENTS WERE
5 OCCURRING. THIS IS 2011, JUNE TO SEPTEMBER, 2011, WHEN THESE
6 PATENTS WERE PURCHASED.

7 SO WHAT ELSE WAS SAMSUNG DOING? LET ME SHOW YOU.

8 YOU HAVE SEEN AND HAD IT DESCRIBED BY MR. SOHN IN PART,
9 AND ONE OF THE EXHIBITS THAT CAME IN FROM MR. SOHN IS PX 215,
10 AND THIS IS EXACTLY IN THIS PERIOD OF TIME WHEN THESE PATENTS
11 ARE BEING PURCHASED.

12 ON OCTOBER 4, 2001 -- I'M JUST GOING TO TELL YOU WHAT'S IN
13 THE E-MAIL. ON OCTOBER 4, 2001, MR. PENDLETON WRITES --

14 MR. PRICE: YOUR HONOR, I OBJECT. THIS IS WAY BEYOND
15 THE SCOPE OF REBUTTAL.

16 MR. LEE: YOUR HONOR --

17 MR. PRICE: AND WE KNOW WHAT ARGUMENT --

18 THE COURT: OKAY. EXCUSE ME. MR. LEE IS COVERING
19 THE DEFENSIVE CASE TO SAMSUNG'S AFFIRMATIVE CASE. THIS WAS AT
20 SAMSUNG'S REQUEST THAT WE ORDER THE CLOSINGS THIS WAY. I WOULD
21 LIKE HIM TO CONTINUE.

22 THE OBJECTION'S OVERRULED. 2:27 IS THE TIME.

23 AND SAMSUNG'S CLOSING WAS FOUR MINUTES OVER, SO IF YOU'RE
24 GOING TO KEEP OBJECTING, I MAY GIVE THOSE FOUR MINUTES TO
25 APPLE.

1 IT'S 2:27. GO AHEAD, PLEASE.

2 MR. LEE: ON OCTOBER 4, 2001, MR. PENDLETON WRITES,
3 "IT CONTINUES TO BE SAMSUNG'S POSITION TO AVOID ATTACKING APPLE
4 DUE TO THEIR STATUS AS A LARGE CUSTOMER." THAT'S OCTOBER 4TH,
5 2011, RIGHT IN THE MIDDLE OF THESE PURCHASE OF PATENTS.

6 THREE DAYS LATER, THEY CHANGE THEIR MIND. THREE DAYS
7 LATER, THEY SAY, "THIS IS OUR BEST OPPORTUNITY TO ATTACK."

8 "ATTACK" IS NOT MY WORD. IT'S THEIR WORD.

9 SO WHAT HAS CHANGED DURING THAT TIME? THE E-MAIL TELLS
10 YOU. FIRST IT TELLS YOU THAT ON OCTOBER 4TH, THE IPHONE 4S WAS
11 LAUNCHED. IT WAS ENORMOUSLY SUCCESSFUL.

12 SECOND, IT TELLS YOU EXPLICITLY THAT MR. JOBS DIED.

13 AND WHAT IS THE PLAN? HERE IS WHAT THE E-MAIL SAYS, THREE
14 DAYS LATER, "WE'RE GOING TO ATTACK AS A VERY AGGRESSIVE
15 STRATEGY," AND THIS PURCHASE OF PATENTS, AND THE ASSERTION OF A
16 PATENT, SPENDING MILLIONS OF DOLLARS TO TRY TO CONVINCE YOU
17 THAT PATENTS DON'T HAVE MUCH VALUE ARE PART, PART OF THIS PLAN
18 TO ATTACK.

19 NOW, LET ME TURN QUICKLY TO THE PATENTS BECAUSE I THINK
20 WHEN YOU LOOK AT THE PATENTS, YOU'LL ACTUALLY BE ABLE TO SEE
21 THE INCONSISTENCY WITH THE POSITIONS.

22 IF YOU REMEMBER MR. PARULSKI AND MR. SCHONFELD, THEY
23 TESTIFIED THAT THESE TWO PATENTS ARE -- AND I HAVE IT ON THE
24 SCREEN NOW -- FUNDAMENTAL AND REVOLUTIONARY. THAT'S WHAT THEY
25 SAID. THESE PATENTS ARE FUNDAMENTAL AND REVOLUTIONARY.

1 SAMSUNG CHARACTERIZED THESE PATENTS AS FUNDAMENTAL AND
2 REVOLUTIONARY TO YOU, EVEN THOUGH ITS OWN EXPERTS HAD NEVER
3 HEARD OF THE PATENTS BEFORE THE LAWYERS HANDED THEM TO THEM,
4 EVEN THOUGH ITS OWN LAWYER -- EVEN THOUGH ITS OWN EXPERTS HAD
5 NEVER HEARD OF THE INVENTORS BEFORE THE LAWYERS HANDED THE
6 PATENTS TO THEM.

7 SAMSUNG CHARACTERIZED THESE PATENTS AS FUNDAMENTAL AND
8 REVOLUTIONARY EVEN THOUGH IT COULD NOT SHOW YOU A SINGLE MODERN
9 DAY PRODUCT, NOT A SINGLE MODERN DAY PRODUCT THAT USED THESE
10 INVENTIONS.

11 AND THEY CHARACTERIZED THEM AS FUNDAMENTAL AND
12 REVOLUTIONARY EVEN THOUGH THERE WAS ABSOLUTELY NO EVIDENCE THAT
13 ANYBODY COPIED THE PATENTS, COPIED THE PRODUCTS THAT THEY
14 INTRODUCED EARLIER, OR COPIED THE TECHNOLOGY.

15 BUT THEN THEY SAY THAT APPLE'S PATENTS ARE TRIVIAL AND
16 NARROW.

17 I'LL ASK YOU THE SAME QUESTION THAT THEY HAVE ASKED YOU.
18 DOES THAT MAKE SENSE?

19 NOW, THE '239 PATENT IS THE FIRST OF THE TWO PATENTS. IT
20 IS, AS YOU NOW KNOW, ABOUT 20 YEARS OLD AND IT HAS EXPIRED.

21 I DON'T DISAGREE WITH MR. JOHNSON. THAT DOESN'T MEAN THAT
22 THEY CAN'T GET DAMAGES DURING THE PERIOD THAT THE PATENT WAS IN
23 EFFECT.

24 BUT THIS IS WHERE WHAT MR. MCELHINNY SAID IS IMPORTANT.
25 IT IS SO IMPORTANT TO WATCH WHAT PEOPLE DID RATHER THAN WHAT

1 THEY SAY TODAY THEY COULD HAVE DONE.

2 WHAT HAPPENED IN THE 15 YEARS BEFORE THIS PATENT WAS
3 ACQUIRED BY SAMSUNG? APPLE'S PRODUCTS WERE ON THE MARKET, THE
4 PRODUCTS ACCUSED OF INFRINGING.

5 DID VOCI, WHO OWNED THE PATENT, EVER ONCE SUGGEST, EVEN
6 THOUGH IT HAD A PATENT BROKER UP THERE TRYING TO SELL THE
7 PATENT, DID THEY ONCE SUGGEST THAT APPLE WAS INFRINGING? NO.
8 AND THERE'S A REASON.

9 AND THE REASON IS THAT THE PATENT COVERS A VERY SPECIFIC
10 IMPLEMENTATION OF AN OLDER TECHNOLOGY THAT YOU DON'T NEED
11 TODAY.

12 YOU MAY RECALL, WHEN I WAS CROSS-EXAMINING DR. SCHONFELD,
13 I TRIED TO GET HIM TO SAY YES OR NO, WHAT WAS IN THE PATENT,
14 AND WE HAD A LITTLE BIT OF TROUBLING GETTING THERE.

15 THERE'S A REASON HE DIDN'T WANT TO ACKNOWLEDGE WHAT WAS IN
16 THE PATENT, BECAUSE THE PATENT GIVES YOU THE ANSWER.

17 THE PATENT TALKS IN TERMS OF ANALOG VIDEO, LIKE OUR OLD
18 ANALOG PHONES, OUR OLD ANALOG TV'S. IT TALKS ABOUT VIDEO
19 CAMERAS AND VCR'S.

20 IT HAS A FIGURE 1 IN THE PATENT WHICH TELLS YOU EVERYTHING
21 YOU NEED TO KNOW AS YOU TRY TO UNDERSTAND WHAT THE PATENT
22 CLAIMS. THAT FIGURE 1 DESCRIBES A REMOTE UNIT.

23 THE REMOTE UNIT DOESN'T RECORD, THOUGH. THE REMOTE UNIT
24 CAPTURES VIDEO THAT HAS BEEN RECORDED ELSEWHERE, THE VIDEO
25 CAMERA HERE, AND THEN, AND ONLY THEN, DOES IT DO SOMETHING WITH

1 IT.

2 YOU SAW THE INVENTOR'S FIRSTLOOK PRODUCT FROM THE EARLY
3 1990S.

4 NOW, I'M NOT SUGGESTING THAT YOU SHOULD COMPARE THIS TO
5 APPLE'S IPHONE TO MAKE YOUR INFRINGEMENT DETERMINATION. YOU
6 DON'T NEED TO.

7 BUT IT TELLS YOU A LOT ABOUT WHAT THE TERMS IN THE PATENT
8 MEAN. IT WAS DESIGNED IN THE EARLY 1990S, IT WAS WEIGHED 28
9 POUNDS, AND IT WAS DESIGNED TO BE USED WITH ANALOG VIDEO
10 CAMERAS. AND IT SAYS RIGHT IN THE BROCHURE, AT PX 251, VHS,
11 BETA, 8 MILLIMETER.

12 LADIES AND GENTLEMEN, THIS IS THE ONLY PRODUCT THAT YOU
13 HAVE SEEN THAT PRACTICES THIS INVENTION. OTHER THAN ACCUSING
14 APPLE'S PRODUCTS, SAMSUNG HAS NOT IDENTIFIED FOR YOU A SINGLE
15 OTHER PRODUCT -- AND THIS HAS BEEN OFF THE MARKET FOR 15
16 YEARS -- THAT USES THIS INVENTION.

17 DID THEY SHOW YOU A SINGLE SAMSUNG PRODUCT THAT USES THIS
18 INVENTION? THEY CALL THIS INVENTION FUNDAMENTAL.

19 BUT THEY DIDN'T TELL YOU THAT THERE'S EVEN A SAMSUNG
20 PRODUCT THAT USES IT. WHY? BECAUSE TECHNOLOGY HAS MOVED
21 FORWARD.

22 AND DR. STORER EXPLAINED JUST THAT TO YOU.

23 IF WE PUT ON THE SCREEN CLAIM 15, THIS IS WHAT MR. JOHNSON
24 PUT UP THERE, BUT HE NEVER USED THE WORDS IN HIS CLOSING "VIDEO
25 CAPTURE MODULE." THAT'S A TERM IN THE PATENT, VIDEO CAPTURE

1 MODULE.

2 AND AS HER HONOR HAS EXPLAINED TO YOU, YOU ARE TO USE THE
3 PLAIN AND ORDINARY MEANING OF THAT BACK IN 1994.

4 SO WHAT WAS THE PLAIN AND ORDINARY MEANING? WHAT WAS A
5 VIDEO CAPTURE MODULE IN 1994?

6 THE PATENT AND THE EVIDENCE TELLS US. IT WAS A COMPONENT
7 THAT YOU COULD GO OUT AND BUY, THAT YOU COULD SNAP ON A VIDEO
8 CARD AND INSTALL IN YOUR COMPUTER. IT LOOKS LIKE THE ONE ON
9 THE SCREEN NOW FROM PX 248. MR. FREEMAN USED IT. DR. STORER
10 USED IT. EVEN MR. GARCIA'S COLLEGE ROOMMATE USED IT.

11 REMEMBER, LADIES AND GENTLEMEN, THE WORDS IN THE
12 SPECIFICATION, THESE AREN'T RANDOM WORDS. THESE ARE THE WORDS
13 THAT THE INVENTORS PUT DOWN IN THEIR ORIGINAL APPLICATION.
14 THIS IS WHAT THEY WROTE IN 1994.

15 AND THE PATENT DESCRIBES A VIDEO CAPTURE MODULE, JUST AS
16 DR. STORER DESCRIBED IT AND EXACTLY AS THE TYPE OF PRIOR ART
17 THAT COULD BE BOUGHT WITH A VIDEO CARD AND INSTALLED IN YOUR
18 COMPUTER. THE PATENT TELLS YOU THAT.

19 DR. STORER TOLD YOU THAT AS WELL.

20 APPLE'S IPHONE PRODUCTS DON'T HAVE ONE. THEY DON'T NEED
21 ONE. WE TAKE DIGITAL VIDEO. THE WORLD HAS MOVED FROM ANALOG
22 VIDEO TO DIGITAL VIDEO. WE TAKE DIGITAL VIDEO AND THERE'S NO
23 NEED TO CAPTURE IT ANYWHERE ELSE.

24 THAT'S WHY, WHEN SAMSUNG CLOSED TODAY, THEY REFERRED YOU
25 TO PHRASES LIKE "CAPTURE VIDEO" DESCRIBING THE RECORDING OF IT

1 AND THEY NEVER USED THE WORDS "VIDEO CAPTURE MODULE."

2 AND THERE'S A SIMPLE REASON. WE DON'T HAVE THAT.

3 DR. SCHONFELD AND DR. STORER BOTH LOOKED AT THE BILL OF
4 MATERIALS. THE BILL OF MATERIALS HAS EVERY SINGLE COMPONENT OF
5 THE ACCUSED PRODUCTS RIGHT DOWN TO THE LAST SCREW -- YOU WILL
6 HAVE THEM BEFORE YOU -- LITERALLY TO THE LAST SCREW. THERE'S
7 NO -- THERE IS NO VIDEO CAPTURE MODULE.

8 WHY? BECAUSE WE RECORD DIGITAL VIDEO. WE DON'T NEED TO
9 CAPTURE IT FROM SOMEWHERE ELSE.

10 IN THE SAME WAY, THERE'S MEANS FOR TRANSMISSION, AND I'LL
11 JUST SAY THIS TO GUIDE YOU IN YOUR DELIBERATIONS. CLAIM 15 IN
12 THE SECOND PART HAS THAT MEANS OF TRANSMISSION.

13 WHEN YOU LOOK AT HER HONOR'S FINAL INSTRUCTION NUMBER 27,
14 YOU WILL SEE SHE SAYS THIS TYPE OF CLAIM, AMONG ALL THE CLAIMS
15 YOU HAVE TO CONSIDER, HAS A SPECIAL MEANING, AND THAT SPECIAL
16 MEANING IS THEY HAVE TO SHOW THAT THE SPECIFIC STRUCTURE, THE
17 SPECIFIC STRUCTURE THEY DESCRIBED 20 YEARS AGO, IS IN OUR
18 PRODUCT. THAT'S WHAT HER HONOR'S CLAIM INTERPRETATION SAYS,
19 AND THAT'S WHAT'S REQUIRED.

20 THEY CAN'T DO IT. THEY CAN'T DO IT BECAUSE THERE ARE NO
21 PORTS TO PLUG CABLES IN BECAUSE WE DON'T NEED THEM. THERE ARE
22 NO MODEMS OUTSIDE OF THE TELEPHONE BECAUSE WE DON'T NEED THEM.

23 THE SPECIFIC THINGS THAT HER HONOR HAS IDENTIFIED SIMPLY
24 AREN'T IN THE APPLE PHONE BECAUSE WE DON'T NEED THEM.

25 NOW LET'S LOOK AT THE '449 PATENT, AND LET ME ADDRESS ONE

1 THING FIRST, WHICH IS THIS ATTACK ON DR. STORER'S
2 QUALIFICATIONS.

3 THIS PATENT IS ABOUT DATA COMPRESSION AND DATA
4 DECOMPRESSION. MR. PARULSKI TOLD YOU THAT. DR. STORER TOLD
5 YOU THAT.

6 AS BETWEEN THE TWO OF THEM, THE PERSON WHO HAS THE REAL
7 EXPERIENCE IN DATA COMPRESSION AND DECOMPRESSION IS ACTUALLY
8 DR. STORER.

9 BUT YOU DON'T HAVE TO TAKE MY WORD FOR IT. WHEN NASA,
10 RIGHT, THE NATIONAL AERONAUTICS SPACE AGENCY, NEEDED SOMEONE TO
11 COME IN AND CONSULT ON DATA DECOMPRESSION AND DATA COMPRESSION,
12 WHO DID THEY GO TO? THEY WENT TO DR. STORER.

13 NOW, WHAT DR. STORER TOLD YOU IS THERE ARE FIVE SEPARATE
14 REASONS, FIVE SEPARATE REASONS THAT THE MODERN DAY FACETIME IN
15 IPHONE DOESN'T USE THE CLAIMED INVENTION. I'M NOT GOING TO GO
16 THROUGH ALL FIVE. INSTEAD I'M GOING TO IDENTIFY TWO FOR YOU.

17 THE FIRST IS THIS. THERE IS A REQUIREMENT OF A LIST IN A
18 SEARCH MODE. WHAT THE PATENT TELLS US AND WHAT MR. PARULSKI
19 ACKNOWLEDGED IS THIS: THE INVENTION EXISTED BECAUSE IT WAS NOT
20 POSSIBLE TO DISPLAY ALL THE PHOTOS IN THE CAMERA AND SIMPLY
21 SCROLL THROUGH THEM. THE PATENT SAYS THAT.

22 BUT MR. PARULSKI SAID IT IN HIS TRIAL TESTIMONY
23 EXPLICITLY, AND IF I CAN PUT THAT ON THE SCREEN. THE WHOLE
24 PURPOSE OF THIS WAS YOU CAN'T PUT ALL OF THE PICTURES UP AT
25 ONCE. THE TECHNOLOGY WON'T ALLOW IT.

1 SO WHAT ARE WE GOING TO DO? WE'RE GOING TO HAVE A LIST.
2 WE'RE GOING TO HAVE A SEARCH MODE. AND THAT'S WHAT'S SHOWN AT
3 FIGURES 4 AND 7.

4 DR. STORER ALSO EXPLAINED TO YOU THAT IN THE OLD
5 TECHNOLOGY, THERE WAS A REASON TO HAVE WHAT THE PATENT CLAIMS
6 AS A SINGLE COMPRESSOR BECAUSE THE COMPRESSION TECHNIQUES FOR
7 VIDEO AND STILL IMAGES OVERLAPPED AT THE TIME.

8 BUT TODAY, THEY'RE DIFFERENT, VERY DIFFERENT, AND
9 COMPLETELY DIFFERENT.

10 AND AS A CONSEQUENCE, IF YOU LOOK AT SDX 3729, WHICH I'M
11 GOING TO PUT ON JUST YOUR SCREENS RIGHT NOW, YOU WILL SEE THAT
12 THERE ARE TWO DIFFERENT COMPONENTS EMPLOYING TWO DIFFERENT
13 METHODOLOGIES MADE BY TWO DIFFERENT SUPPLIERS. THEY DON'T GET
14 CLOSE TO SATISFYING THE LIMITATIONS.

15 AND THEY'RE DIFFERENT FOR A REASON. THE MODERN DAY
16 TECHNOLOGY NEEDS TO BE DIFFERENT. THEY CAN'T BE 20 YEAR OLD
17 TECHNOLOGY.

18 NOW, MR. JOHNSON MENTIONED, AND I AGREE WITH HIM, SOME OF
19 THE COMPONENTS THAT ARE ACCUSED OF INFRINGING CAME FROM
20 SAMSUNG.

21 THIS IS IMPORTANT FOR TWO REASONS. HERE IS THE FIRST.
22 SAMSUNG BOUGHT THESE PATENTS IN 2011. THEY DIDN'T SUE US UNTIL
23 APRIL OF 2012. FOR SEVEN MONTHS THEY WERE SELLING US BILLIONS
24 OF DOLLARS OF COMPONENTS, BILLIONS OF DOLLARS OF COMPONENTS,
25 AND THEN THEY SUED US AND THEY NOW CLAIM THAT WE'RE INFRINGING

1 THIS PATENT, THE PATENT THEY PURCHASED, BY USING THE COMPONENTS
2 THEY SOLD TO US. THEY WANT \$6 MILLION FOR USING COMPONENTS
3 THAT THEY SOLD TO US WHILE THEY HELD THE PATENTS AND WE BOUGHT
4 THEM.

5 NOW, IT'S IMPORTANT FOR A SECOND REASON, AND HERE'S WHAT
6 IT IS. MR. JOHNSON SAID IT'S NO DEFENSE TO PATENT INFRINGEMENT
7 THAT WE BOUGHT THE COMPONENTS FROM SAMSUNG.

8 HE'S RIGHT. I AGREE. IT'S NOT A DEFENSE IF YOU'RE THE
9 MAKER OR USER OR SELLER OF A COMPONENT TO A CLAIM OF PATENT
10 INFRINGEMENT.

11 IT APPLIES TO OUR PURCHASE OF COMPONENTS FROM SAMSUNG.

12 IT APPLIES TO SAMSUNG'S USE OF GOOGLE SOFTWARE.

13 IT DOESN'T MATTER WHERE IT COMES FROM IF YOU'RE THE
14 PERSON, IF YOU ARE THE PERSON WHO USES IT.

15 NOW, DAMAGES QUICKLY, AND HERE IS THE MOST IMPORTANT THING
16 ABOUT THE DAMAGES CLAIM. YOU'VE HEARD MR. QUINN ATTACK
17 DR. HAUSER FOR THE LAST HALF HOUR OR SO, ATTACK HIS STUDY AS
18 DISHONEST AND A SHAM.

19 WHAT DID SAMSUNG DO WHEN IT WAS ITS TURN TO PROVE DAMAGES?
20 REMEMBER, THE SHOE IS NOW ON THE OTHER FOOT. ASK YOURSELF,
21 WHAT DID THEY DO?

22 DID THEY HAVE DR. ERDEM DO AN EYE TRACKING STUDY TO PROVE
23 THEIR DAMAGES? NO.

24 DID THEY HAVE DR. CHEVALIER DO A LINE COUNTING STUDY TO
25 PROVE THEIR DAMAGES? NO.

1 DID THEY DO WHAT MR. WAGNER SAID, A CONJOINT STUDY? NO.

2 INSTEAD, THEY BROUGHT DR. RAO IN, WHO TESTIFIED FOR EIGHT
3 MINUTES, AND HE PRESENTED YOU WITH A SURVEY, A MAX DIFF SURVEY
4 THAT, LIKE DR. ERDEM'S STUDY, LIKE DR. CHEVALIER'S STUDY, HAS
5 NEVER BEEN USED IN A COURT IN AMERICA TO DETERMINE DAMAGES.

6 HE SHOWED YOU HIS SURVEY SHEET, HE DESCRIBED THE DATA
7 POINTS, AND HE SAID THAT'S ENOUGH.

8 NOW, LADIES AND GENTLEMEN, WHEN YOU RETIRE TO THE JURY
9 ROOM AND YOU CONSIDER THE ATTACKS ON DR. HAUSER, ASK YOURSELF
10 THIS: IF WHAT DR. RAO DID IS ENOUGH TO DETERMINE DAMAGES, YOU
11 KNOW, THE AMOUNT DOESN'T MATTER, IT'S THE ANALYTICAL FRAMEWORK
12 YOU USE, IF WHAT DR. RAO DID IS ENOUGH, HOW CAN IT POSSIBLY BE
13 THAT WHAT DR. HAUSER DID NOT BE?

14 AND YOU'LL REMEMBER MY LAST CROSS-EXAMINATION OF DR. RAO.
15 DID ANYBODY ASK YOU, DID ANYBODY ASK YOU TO PERFORM A MAX DIFF
16 SURVEY, A CONJOINT SURVEY, ANY OTHER SURVEY THAT WOULD HAVE
17 SHOWN YOU WHAT THE APPLE FEATURES WERE WORTH?

18 AND THE ANSWER WAS NO. HE DIDN'T DO IT. NO ONE ELSE DID
19 IT. AND THERE'S ONLY ONE REASON. THEY DIDN'T WANT TO KNOW THE
20 ANSWER.

21 NOW, LADIES AND GENTLEMEN, WE'RE AT THE END OF OUR
22 CLOSING, AND BEFORE I SIT DOWN, I'D LIKE TO THANK YOU ON BEHALF
23 OF ALL OF US FOR YOUR CAREFUL TIME AND ATTENTION. WE KNOW IT'S
24 BEEN A BURDEN, A BURDEN UPON YOU, A BURDEN UPON YOUR FAMILIES.

25 ON BEHALF OF MR. MCELHINNY AND MS. KREVANS AND ALL OF OUR

1 COLLEAGUES, BUT MOSTLY ON BEHALF OF THE FOLKS AT APPLE, WE
2 THANK YOU.

3 NOW I'M GOING TO ASK YOU THAT LAST THING THAT I SAID I WAS
4 GOING TO ASK YOU TO DO, AND THAT'S THIS: BEFORE YOU RETIRE AND
5 BEGIN YOUR DELIBERATIONS, PUT YOURSELF IN THE POSITION OF THE
6 APPLE ENGINEERS, SCIENTISTS, AND LEADERS. PUT YOURSELF IN THE
7 POSITION OF SOME OF THE PEOPLE LIKE MR. CHRISTIE, MR. DENIAU,
8 MR. GARCIA, MR. MILLET, AND MR. SCHILLER.

9 LADIES AND GENTLEMEN, THESE ARE THE PEOPLE WHO CAME TO
10 WORK BEFORE THE SUN CAME UP AND LEFT AFTER THE SUN WENT DOWN.

11 MR. PRICE: YOUR HONOR, I OBJECT. THIS ISN'T
12 REBUTTAL TO THE OFFENSIVE CASE.

13 MR. LEE: YOUR HONOR, THIS GOES DIRECTLY TO
14 CHALLENGING THEIR PATENTS.

15 THE COURT: OVERRULED.

16 MR. LEE: THESE ARE THE FOLKS WHO WORKED TIRELESSLY,
17 AS MR. GARCIA DESCRIBED TO YOU, TO INVENT FACETIME, AND AS
18 OTHER DESCRIBED TO YOU, TO INVENT THE IPHONE AND THE IPOD
19 TOUCH.

20 THESE ARE PEOPLE WHO INVENTED AND INNOVATED AND
21 FUNDAMENTALLY CHANGED, FUNDAMENTALLY CHANGED THE WAY WE
22 COMMUNICATE.

23 AND FOR THESE FIVE PEOPLE, THEY CAME AND GOT ON THE STAND
24 AND UNDERWENT MUCH CROSS-EXAMINATION.

25 NOW, YOU'RE ONE OF THOSE PEOPLE, AND YOU'VE HEARD THAT THE

1 SAMSUNG PATENTS ARE REVOLUTIONARY AND FUNDAMENTAL, PATENTS THAT
2 NO ONE HAS USED, THAT NO ONE HAD HEARD OF BEFORE THE LAWYER
3 GAVE IT TO THE EXPERT, AND THAT NO ONE HAS COPIED.

4 BUT YOUR WORK IS TRIVIAL AND UNIMPORTANT.

5 DOES THAT MAKE SENSE TO YOU?

6 AND YOU SAY TO YOURSELF, IF YOU'RE MR. GARCIA OR
7 MR. MILLET, HOW CAN THAT BE? HOW CAN IT BE THAT OUR WORK IS
8 TRIVIAL AND UNIMPORTANT, BUT THESE PATENTS THAT NO ONE IS USING
9 ARE FUNDAMENTAL AND REVOLUTIONARY?

10 YOUR COMMON SENSE WILL TELL YOU WHAT THE ANSWER TO THAT
11 IS.

12 WE ALL WOULD AGREE THAT THE WORLD AND THE GLOBAL ECONOMY
13 DEPENDS UPON INNOVATION AND INVENTION. WE DEPEND ON PATENTS,
14 PATENTS ISSUED BY THE UNITED STATES PATENT OFFICE UNDER OUR
15 CONSTITUTION. WE DEPEND UPON FAIR AND SQUARE COMPETITION. WE
16 DEPEND ON OTHERS TO RESPECT PATENTS, AND AS MR. DENISON SAID,
17 WE DEPEND UPON PEOPLE NOT TO ENGAGE IN THE UNFAIR COMPETITION
18 OF PATENT INFRINGEMENT.

19 AND MOST OF ALL, LADIES AND GENTLEMEN, WE DEPEND UPON
20 PEOPLE LIKE YOU WHO WILL RECOGNIZE THE DIFFERENCE BETWEEN FAIR
21 COMPETITION, FAIR AND SQUARE COMPETITION, AND UNFAIR
22 COMPETITION, THE UNFAIR COMPETITION OF PATENT INFRINGEMENT, AND
23 TO NOT ALLOW IT TO HAPPEN.

24 AND THAT'S WHAT WE ASK YOU TO DO NOW, HERE, TODAY.

25 THANK YOU.

1 THE COURT: THE TIME IS 2:46.

2 PLEASE COME FORWARD. I'M GOING TO ASK MS. PARKER BROWN TO
3 SWEAR IN OUR BAILIFF, PLEASE.

4 (COURT SECURITY OFFICER SWORN.)

5 THE MARSHAL: I DO.

6 THE COURT: OKAY. SO WHAT IS GOING TO HAPPEN IS THAT
7 YOU ARE GOING TO GET A COPY OF -- NO. YOU'RE GOING TO GET THE
8 ACTUAL VERDICT FORM.

9 YOU'RE ALSO GOING TO RECEIVE 15 BLANK NOTES. IF YOU
10 HAVE -- IF ANYONE ON THE JURY HAS ANY QUESTION, YOU CAN PLEASE
11 FILL OUT THE NOTE NUMBER, DATE, TIME, YOUR SIGNATURE.

12 AND WE WILL TRY TO RESPOND TO YOU AS QUICKLY AS WE CAN,
13 BUT PLEASE CONTINUE TO DELIBERATE. IT MAY TAKE US SOME TIME TO
14 ASSEMBLE EVERYONE AND JOINTLY AGREE UPON A RESPONSE TO YOU.

15 SO WHENEVER YOU HAVE A NOTE, IF YOU WOULD JUST KNOCK ON
16 THE DOOR, YOUR BAILIFF WILL BE OUTSIDE.

17 ALL COMMUNICATIONS SHOULD BE IN WRITING BECAUSE THE
18 PARTIES ARE ENTITLED TO KNOW WHAT INFORMATION YOU ARE GETTING
19 WHILE YOU'RE DELIBERATING.

20 IN ADDITION, YOU WILL HAVE THE JOINT EXHIBIT LIST. IF YOU
21 WANT TO FIND ANY OF THE EXHIBITS THAT HAVE BEEN REFERENCED
22 THROUGHOUT THE TRIAL, YOU'LL HAVE THIS INFORMATION IN THIS RED
23 WELL WHICH WE ARE GOING TO GIVE TO YOU.

24 IN ADDITION, YOU'RE GOING TO HAVE ALL OF THESE CARTS THAT
25 HAVE ALL OF THE EXHIBITS THAT HAVE BEEN ADMITTED INTO EVIDENCE,

1 SO YOU CAN LOOK AT ANYTHING IF YOU WISH.

2 SO TODAY WE'LL BE DELIBERATING UNTIL 4:30 AND YOU WILL
3 STAY IN THIS JURY ROOM.

4 BUT AS OF TOMORROW, I WOULD LIKE YOU TO DELIBERATE IN MY
5 JURY ROOM, WHICH IS ON THE FOURTH FLOOR. IF WE NEED TO DO
6 ANYTHING IN OPEN COURT, WE'LL COME BACK TO THIS COURTROOM
7 BECAUSE I WILL HAVE OTHER CRIMINAL AND CIVIL CASES IN THE NEXT
8 TWO DAYS HAPPENING IN MY COURTROOM, BUT YOU'LL BE DELIBERATING
9 ON THE FOURTH FLOOR.

10 WHEN YOU GET OFF THE ELEVATORS AND GO BACK TO THE BACK
11 HALL, PLEASE TURN TO THE LEFT TO GO TO THE FIRST STREET SIDE OF
12 THE BUILDING INSTEAD OF GOING TO THE RIGHT TO THE SECOND STREET
13 SIDE OF THE BUILDING, WHICH IS WHERE WE ARE NOW.

14 SO YOU'LL BE DELIBERATING ON THE FOURTH FLOOR FOR THE REST
15 OF THE TIME, BUT THEN WE'LL ALWAYS COME UP HERE TO THIS
16 COURTROOM, SINCE THIS IS THE ONLY ONE LARGE ENOUGH, IF WE NEED
17 TO DO ANYTHING IN OPEN COURT. OKAY?

18 ALL RIGHT. SO WITH THAT, YOU CAN PLEASE TAKE YOUR BINDERS
19 AND GO TO THE JURY ROOM UNTIL 4:30 TODAY.

20 THE CLERK: I'M JUST GOING TO GO BACK AND REMIND THEM
21 THAT I NEED THEIR LUNCH ORDER.

22 THE COURT: OH, THAT'S FINE.

23 ALL RIGHT. THANK YOU FOR YOUR PATIENCE AND YOUR SERVICE.

24 (JURY OUT AT 2:49 P.M.)

25 THE COURT: OKAY. THE RECORD SHOULD REFLECT THAT THE

1 JURORS HAVE LEFT THE COURTROOM.

2 PLEASE TAKE A SEAT.

3 I WOULD LIKE EACH -- COUNSEL FOR EACH SIDE TO REVIEW THE
4 MATERIALS THAT ARE ACTUALLY GOING BACK TO THE JURY ROOM. I
5 WANT TO HAVE EVERYONE ON THE RECORD SAY THAT THEY ARE OKAY WITH
6 THESE PARTICULAR MATERIALS.

7 SO ONE IS THE JOINT EXHIBIT, JOINT LIST OF EXHIBITS
8 ADMITTED THROUGH APRIL 28TH, 2014. THE ECF DOCKET NUMBER IS
9 1857, AND I WILL GIVE YOU AN OPPORTUNITY TO REVIEW THE ACTUAL
10 COPY.

11 ANOTHER ONE ARE THE BLANK JURY NOTES.

12 THE THIRD IS THE VERDICT FORM, WHICH IS ECF DOCKET NUMBER
13 1836.

14 LET ME ASK MS. PARKER BROWN IF YOU CAN LET THEM SEE THOSE
15 MATERIALS.

16 AND WE DO HAVE AGREEMENT AS TO THE EXHIBITS, CORRECT? CAN
17 YOU PLEASE IDENTIFY WHICH ARE THE CARTS THAT WILL BE GOING TO
18 THE JURY ROOM?

19 THE CLERK: SO THEY'RE GOING TO INSPECT THIS?

20 THE COURT: YES, IF YOU WOULD, PLEASE.

21 WHICH ONES ARE THE CARTS THAT ARE GOING TO THE JURY ROOM?

22 THE CLERK: THESE TWO AND THE DEVICES, I BELIEVE.

23 MR. SABRI: THAT'S RIGHT.

24 THE COURT: ALL RIGHT. SO LET'S JUST PUT ON THE
25 RECORD, I WANT SOMEONE TO IDENTIFY THEMSELVES FOR APPLE AS

1 APPROVING THE TWO BEIGE CARTS FULL OF BINDERS AND THE TWO BLACK
2 CARTS FULL OF DEVICES THAT ARE IN RED WELLS. CAN I HAVE
3 SOMEONE --

4 MR. SABRI: NATHAN SABRI FOR APPLE, YOUR HONOR.

5 THE COURT: AND YOU APPROVE OF THOSE FOUR CARTS?

6 MR. SABRI: YES, YOUR HONOR.

7 THE COURT: ALL RIGHT. MS. MAROULIS, DO YOU APPROVE
8 OF THOSE FOUR CARTS?

9 MS. MAROULIS: YES, YOUR HONOR.

10 THE COURT: OKAY. THANK YOU.

11 THEN I'M GOING TO HAVE MS. PARKER BROWN -- MS. PALANJIAN,
12 MR. HUANG, MAYBE YOU CAN HELP -- WHEEL THOSE INTO THE JURY
13 ROOM, PLEASE.

14 OKAY. MR. SABRI, HAVE YOU REVIEWED THE VERDICT FORM, THE
15 EXHIBIT LIST, AND THE JURY NOTES?

16 MR. SABRI: I HAVE, YOUR HONOR.

17 THE COURT: OKAY. ARE THOSE SATISFACTORILY TO APPLE?

18 MR. SABRI: YES, YOUR HONOR.

19 THE COURT: ALL RIGHT. MS. MAROULIS, HAVE YOU
20 REVIEWED THE VERDICT FORM, THE JURY NOTES, AND EXHIBIT LIST?

21 MS. MAROULIS: YES, YOUR HONOR. THEY'RE SATISFACTORY
22 FOR SAMSUNG.

23 THE COURT: OKAY. THANK YOU. SO THOSE WILL GO BACK
24 TO THE JURY ROOM.

25 I DID JUST WANT TO PLACE ON THE RECORD AS WELL THAT THE

1 FINAL JURY INSTRUCTIONS THAT WERE READ TO THE JURY YESTERDAY
2 WERE ECF DOCKET NUMBER 1847.

3 HAVE YOU PROVIDED YOUR BEST MEANS OF CONTACT AND CONTACT
4 INFORMATION TO MS. PARKER BROWN?

5 MR. MCELHINNY: WE HAVE, YOUR HONOR.

6 MS. MAROULIS: YES, YOUR HONOR.

7 THE COURT: OKAY, GREAT. SO WE KNOW HOW TO CONTACT
8 YOU.

9 WE WILL DO IT, AS WE'VE DONE THE PREVIOUS TWO TRIALS, WHEN
10 THE JURORS LEAVE FOR THE END OF THE DAY, WE'LL JUST HAVE A
11 MESSAGE FILED ON ECF SAYING THE JURORS HAVE ADJOURNED FOR THE
12 DAY.

13 WE'LL ALSO DO, AS WE'VE DONE IN THE PREVIOUS TWO TRIALS,
14 WE WILL FILE THE JURY NOTES SO IF YOUR TEAMS ARE DISPARATE,
15 EVERYONE CAN GO ONLINE AND SEE WHAT THE QUESTION WE HAVE.

16 WE HAVE MR. MINTZ HERE, HE'LL BE OUR LIAISON TREE FOR THE
17 MEDIA, AS IN THE PREVIOUS TWO TRIALS.

18 WHAT ELSE? ANYTHING ELSE THAT WE NEED TO COORDINATE?
19 ORGANIZE?

20 MR. MCELHINNY: NOTHING FURTHER FOR APPLE, YOUR
21 HONOR.

22 THE COURT: OKAY. ANYTHING -- ANYTHING MORE THAT WE
23 SHOULD COORDINATE?

24 MS. MAROULIS: NOTHING FURTHER, YOUR HONOR.

25 THE COURT: OKAY. THEN THANK YOU VERY MUCH. WE'LL

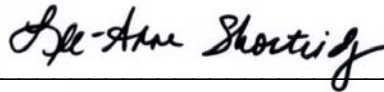
1 GO AHEAD AND LET YOU KNOW WHEN THEY ADJOURN FOR TODAY AND IF WE
2 HAVE ANY NOTES.

3 (A RECESS WAS TAKEN PENDING THE JURY'S DELIBERATIONS.)
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CERTIFICATE OF REPORTER

I, THE UNDERSIGNED OFFICIAL COURT REPORTER OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA, 280 SOUTH FIRST STREET, SAN JOSE, CALIFORNIA, DO HEREBY CERTIFY:

THAT THE FOREGOING TRANSCRIPT, CERTIFICATE INCLUSIVE, IS A CORRECT TRANSCRIPT FROM THE RECORD OF PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.



LEE-ANNE SHORTRIDGE, CSR, CRR
CERTIFICATE NUMBER 9595

DATED: APRIL 29, 2014